

**DESIGN/BUILD CONTRACT  
BETWEEN OWNER AND DESIGN/BUILDER**

This **DESIGN/BUILD CONTRACT** (the “Contract”) is made and entered into by and between the CITY OF DALLAS, a Texas municipal corporation (the “Owner”) and \_\_\_\_\_, a \_\_\_\_\_ corporation, with its principal place of business at \_\_\_\_\_ (the “Design/Builder”).

This Contract is for the design and construction of a project identified as: \_\_\_\_\_, in the City and County of Dallas, Texas (the “Project”).

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Design/Builder agree as follows:

**ARTICLE 1  
THE CONTRACT AND THE CONTRACT DOCUMENTS**

(A) The Contract: The Contract between Design/Builder and Owner consists of this document and the other Contract Documents described in Paragraph 1(B). The Contract shall be effective as of \_\_\_\_\_, the date of its approval, and that date shall also be considered the execution date of this Contract.

(B) The Contract Documents: The Contract Documents consist of this document, the preliminary Design Scope Specification, all Design Documents hereafter prepared by Design/Builder and approved by Owner in accordance with this Contract, the City of Dallas General Conditions for Building Construction (June 25, 2007 Edition; Rev. August 28, 2008) (hereinafter called the “General Conditions”), along with any special provisions added thereto with the consent of Owner. The General Conditions are deemed to be a part of this Contract by reference. The General Conditions shall govern all Construction Work on the Project, for which Construction Work Design/Builder is fully responsible to Owner. The General Conditions shall be included as general provisions for use with Design Documents prepared by Design/Builder, Change Orders and Field Orders issued hereafter, along with any other written amendments executed by Owner and Design/Builder, as well as the following documents (if any):

all of which are hereby incorporated herein by reference and made a part of this Contract.

(C) Enumerated Documents Form Entire Contract: Documents not specifically enumerated in Paragraph 1(B) of this Contract are not Contract Documents.

(D) Contract Interpreted As A Whole: This Contract is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion of the Contract shall be deemed to be required Contract Work as if called for in the whole Contract and no claim for extra work shall be based upon the fact that the description of the Work in question is incomplete.

(E) Provision Of All Things Required: Anything that may be required, implied or inferred by the Contract Documents which make up this Contract, or any one or more of them, shall be provided by Design/Builder for the Contract Price.

(F) Privity Only With Design/Builder: Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between Owner and any person except Design/Builder.

(G) Agreed Interpretation Of Contract Terms: When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage. Headings are used herein solely for convenience.

(H) Term “Include” Intended To Be Encompassing: “Include”, “includes”, or “including”, as used in the Contract, shall be deemed in all cases to be followed by the phrase, “without limitation.”

(I) Use Of Singular And Plural: Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

(J) Definition Of Material Breaches Not Exhaustive: The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the Contract shall not imply that any other, nonspecified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Contract.

(K) Order Of Precedence: Unless otherwise provided in this document, in the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents which make up this Contract, the following shall control:

- (1) As between figures given on plans and scaled measurements, the figures shall govern.
- (2) As between large scale plans and small scale plans, the large scale plans shall govern.
- (3) As between plans and specifications, the requirements of the specifications shall govern.
- (4) As between this document and the plans or specifications, this document shall govern.
- (5) As between this document and the General Conditions, this document shall govern.

(L) Administration: This Contract shall be administered on behalf of Owner by the Director of \_\_\_\_\_, or the Director’s designee (hereinafter called the “Director”), and on behalf of the Design/Builder by its duly authorized representatives.

**ARTICLE 2**  
**DESIGN/BUILDER'S REPRESENTATIONS**

(A) Specific Representations: In order to induce Owner to execute this Contract and recognizing that Owner is relying thereon, Design/Builder, by executing this Contract, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, makes the following express representations to Owner:

(1) Design/Builder is professionally and fully qualified to act as the design professional and the general contractor for the Project and is, and will remain, licensed to practice engineering and architecture and general contracting by all public entities having jurisdiction over Design/Builder or the Project;

(2) Design/Builder will maintain all necessary licenses, permits or other authorizations necessary to act as Design/Builder for the Project until Design/Builder's duties under this Contract have been fully satisfied;

(3) Design/Builder has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design Services and the Work in accordance with the terms of this Contract;

(4) Prior to the execution of this Contract, Design/Builder has visited and inspected the Project site and the local conditions under which the Project is to be designed, constructed and operated, and Design/Builder has performed such tests, if any, as are necessary to determine the conditions under which the Work will be performed, and Design/Builder accepts the conditions of the Work site and has taken those conditions into account in entering into this Contract;

(5) Design/Builder assumes full responsibility to Owner for the improper acts and omissions of its Subcontractors or others employed or retained by Design/Builder in connection with the Project.

**ARTICLE 3**  
**REGULATORY GUIDELINES, REQUIREMENTS AND STANDARDS**

(A) Generally: Design/Builder shall perform all Design Services described in, contemplated by, inferable from, or necessary or desirable to achieve the objectives stated in the Design Scope Specification and the Contract, including all Design Services necessary for the Project to be properly constructed by Design/Builder and used, operated and maintained by Owner in accordance with all applicable guidelines, requirements and standards. "Design Services" means any and all architectural, engineering and design services required to be performed by Design/Builder pursuant to the Contract and all labor, materials, supervision, equipment, computers, documents, and all other things necessary for the performance of such services. "Design Scope Specification" means the document prepared by Owner dated \_\_\_\_\_ which specifies the general scope of the Design Services to be performed by Design/Builder under the Contract. A copy of the Design Scope Specification is attached hereto as Exhibit \_\_\_\_ and is incorporated into this Contract by reference. The Design Services shall be performed within the time provided by the Design Schedule for the performance of Design/Builder's Design Services as provided in Paragraph 3(H) of this Contract.

(B) Owner's Review Of Design Services: Subject to Paragraph 13(G) of this Contract, Design/Builder shall submit all documents produced as part of the Design Services to the Director for review and approval in accordance with the terms of the Contract. However, any review or approval by the Director shall not relieve Design/Builder of or otherwise diminish its obligations under the Contract. The Director may direct Design/Builder to make changes to any design documents in order to conform the documents to Owner's objectives. Any changes by Design/Builder ordered by the Director shall not relieve Design/Builder of its obligations under this Contract unless, and only to the extent that, Design/Builder notifies Owner in writing, within five (5) days after receipt of Owner's directive to make changes, concerning any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements, or other adverse impact that may result from the directed changes. Failure of Design/Builder to submit its notice within the five (5) day period constitutes a waiver by Design/Builder of any claim for an adjustment to the Design Schedule or the Contract Time.

(C) Preparation Of Site Information: Design/Builder shall prepare, as necessary, surveys and topographic information including aerial photographs needed to establish line and grade of sewers, location of property lines and easements. Sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvement as it relates to property lines. **Owner expressly does not warrant any information provided by it in connection with preparation of the above-mentioned information**; Design/Builder, however, may reasonably rely on information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design/Builder from its responsibility to independently verify or investigate information that a reasonable, prudent professional architect or engineer should or would inquire about.

(D) Retention Of Geotechnical Consultants: In preparing the Design Documents, Owner shall separately retain an experienced, qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. Design/ Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of the geotechnical consultant. Nothing in this paragraph, however, prevents Design/Builder from retaining its own geotechnical consultant to review design work, raise issues for mutual discussion, and obtain further information in connection with the geotechnical nature of the Project. **Owner expressly does not warrant any geotechnical information provided by it for use in connection with preparation of the design documents**; Design/Builder, however, may reasonably rely on geotechnical information provided by Owner to the extent the information has been prepared by Owner or an independent consultant hired by Owner to prepare the information specifically for this Project, without absolving Design/Builder from its responsibility to independently verify or investigate information that a reasonable, prudent professional architect or engineer should or would inquire about.

(E) Quality Of Design Services: Design/Builder shall be responsible for the professional quality, completeness, accuracy, and coordination of Design Documents. Design/Builder shall provide Design Services that will result in an operationally cost-efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology. Design/Builder shall provide for all quality control reviews required by sound professional architectural and engineering practices and by governmental authorities having jurisdiction over the Project.

(F) Compliance With Laws And Regulatory Requirements: In providing Design Services, Design/Builder shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design/Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project, including, without limitation, environmental standards, fire and safety regulations, and requirements and compliance with all other applicable standards and codes.

(G) Duty To Correct Errors: Design/Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Design Documents.

(H) Schedule Of Design Services: Design/Builder shall, within ten (10) calendar days after execution of the Contract, submit for Owner's approval the Design Schedule for the performance of Design/Builder's Design Services, which shall include allowance for reasonable time required for the Director's review of submissions and for approvals of authorities having jurisdiction over the Project. This Schedule shall, upon approval by the Director, be considered incorporated and made a part of this Contract as Exhibit A. The Design Schedule, when approved by the Director, shall not, except for good cause, be exceeded by Design/Builder. Should Design/Builder at any time during the course of performing the Contract, have reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it shall immediately notify the Director in writing. Design/Builder shall state the reason for the delay in the notice, including the party responsible, if any, and the steps being taken to remedy or minimize the impact of the delay. **Failure of Design/Builder to submit such notice shall constitute a waiver by Design/Builder of any claim for an adjustment to the Contract Price, the Design Schedule, or the Contract Time.** All extensions of time shall be governed by Articles 16 and 17 of this Contract. Subject to the provisions of Paragraph 13(G) of this Contract, Owner shall review and approve, where appropriate, the Design Schedule, or any portion thereof.

(I) Requirement to Design Within the Project Budget: Owner's total fixed Project Construction Budget for this Project is \$\_\_\_\_\_. **This amount is established as a condition of this Contract, and shall provide the basis for Design/Builder's design decisions.** Design/Builder, in consultation with Owner, shall determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents, and will make reasonable adjustments in the scope of the Project to bring it within the Project Construction Budget. With the Director's approval, Design/Builder may also include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Owner may, in its sole discretion and only if circumstances require it, approve a higher fixed limit for the Project Construction Budget, without any increase in the fee for Design Services under this Contract. **Any redesign or additional design services required to bring the Project within the Owner's fixed Project Construction Budget shall be at Design/Builder's sole expense.**

#### ARTICLE 4 PRELIMINARY CONSULTATION AND PROJECT ANALYSIS

(A) Determining The Project Objectives: Prior to the preparation of the Preliminary Design as required by Article 5 below, Design/Builder shall first consult in detail with Owner, and shall carefully analyze any information furnished by Owner concerning requirements of the Project, including but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations, and objectives, as well as the Design Scope Specification.

(B) Report On Project Requirements And Objectives: Based on its study and analysis, and no later than ten (10) days after the effective date of the Contract, Design/Builder shall prepare and submit to Owner a written report detailing Design/Builder's understanding and analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational, or other problems which may result from said requirements. The written report of Design/Builder shall also include proposed solutions, including design alternatives if appropriate, addressing each of the identified problems. Design/Builder shall review such report with Owner and shall implement such changes as Owner may require as provided in Paragraph 3(B) of this Contract.

(C) Scheduling: Based upon the Design/Builder recommendation that the Project Schedule should be "fast tracked" for the Design Phase, Owner agrees to review the proposed plan of action promptly. The proposed schedule should include sufficient budget allowances in anticipation of currently unknown refinements of budgets that may become necessary and in order to control Project costs.

## **ARTICLE 5 PRELIMINARY DESIGN**

(A) Time For Preliminary Design: Not later than the date called for in the Design Schedule, Design/Builder shall prepare and submit to the Director a Preliminary Design for the Project.

(B) Contents Of Preliminary Design: The Preliminary Design shall address all requirements of the Project and shall include, without limitation, the following:

- (1) preliminary drawings which illustrate each of the basic components of the Project including the size, scale, location, dimensions, and character of each building structure;
- (2) preliminary drawings which illustrate each exterior view of the Project;
- (3) preliminary drawings which illustrate a floor plan for each room, office, and functional area of the Project and the dimensions thereof;
- (4) preliminary drawings and specifications illustrating and describing the architectural, electrical, mechanical, structural, and manufacturing systems of the Project;
- (5) a written description of the materials and equipment to be incorporated into the Project and the location of same; and
- (6) any other documents or things required to illustrate, describe or depict the Preliminary Design and the conformity of same with the requirements of the Design Scope Specification and this Contract.

(C) To Be Reviewed With Owner: Design/Builder shall review the Preliminary Design with the Director and shall incorporate any changes ordered by the Director in regard to the Preliminary Design or the requirements of the Project.

(D) Authorization To Proceed With Detailed Design: After review of the Preliminary Design and incorporation of any changes ordered by the Director, the Director shall authorize Design/Builder in writing to commence preparing the Detailed Design, or such part thereof as directed by the Director.

## **ARTICLE 6 DETAILED DESIGN**

(A) Time For Preparation: Not later than the date called for in the Design Schedule, after the Director has authorized Design/Builder to commence with the Detailed Design as provided in Paragraph 5(D) above, Design/Builder shall prepare and submit to the Director the complete Detailed Design.

(B) The Detailed Design: The Detailed Design shall include all Design Documents which shall describe with specificity all elements, details, components, materials, and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes, including satisfaction of all testing, permitting, qualifications, certifications, validations, and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. Subject to the provisions of Paragraph 13(G) of this Contract, Owner shall review and approve, where appropriate, the Design Documents, or any portion thereof.

(C) Design Documents: Design Documents means all the design documents provided by Design/Builder and approved by Owner pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Design/Builder.

(D) Guaranteed Maximum Price Includes Detailed Design: The Guaranteed Maximum Price, as set forth in Article 10 below, shall include the cost of constructing the Project in strict accordance with the requirements of the Detailed Design.

## **ARTICLE 7 CONSTRUCTION SERVICES**

(A) General Intent: Design/Builder shall perform all Construction Work necessary to construct the Project in accordance with this Contract, and to render the Project and all its components operational and functionally and legally usable for their intended purpose.

(B) Construction Work Defined: The term “Construction Work” shall mean whatever is done by or required of Design/Builder to perform and complete its duties relating to the construction of the Project under the Contract, including, without limitation, the following:

(1) construction of the whole and all parts of the Project in full and strict conformity with this Contract;

(2) the provision and furnishing, and prompt payment therefor, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation,

storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;

(3) the procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;

(4) the creation and submission to Owner of detailed as-built drawings depicting all as-built construction;

(5) the furnishing of any required surety bonds and insurance as required by the Contract;

(6) the furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design/Builder; and

(7) the furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 9 below.

## **ARTICLE 8 TIME FOR CONSTRUCTION: THE CONTRACT TIME**

(A) Notice Of Commencement: After Owner has approved the Design Documents for the Detailed Design, Owner shall issue a notice to commence the Construction Work directing Design/Builder to proceed with the Work on the date indicated in the notice (the “Commencement Date”). The notice to commence Construction Work shall be issued at least ten (10) days prior to the Commencement Date.

(B) Time For Completion: Design/Builder shall commence the Construction Work on the Commencement Date, and the Construction Work shall be carried out regularly and without interruption. Design/Builder shall substantially complete the Construction Work not later than \_\_\_\_\_, or such other date as may by Change Order be later designated (the “Scheduled Completion Date”). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the “Contract Time.” Design/Builder shall achieve Final Completion of the Construction Work no later than thirty (30) calendar days after achieving Substantial Completion.

(C) Liquidated Damages For Delay In Substantial Completion: Design/Builder shall pay Owner the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date. Any sums due and payable hereunder by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Contract. Such liquidated damages shall apply regardless of whether Design/Builder has been terminated by Owner prior to Substantial Completion so long as Design/Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Substantial Completion. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design/Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has

withheld payment, Owner shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

(D) Liquidated Damages For Delay In Final Completion: If Design/Builder fails to achieve Final Completion within thirty (30) calendar days after the date of Substantial Completion, Design/Builder shall pay Owner the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Contract. Liquidated damages shall apply regardless of whether Design/Builder has been terminated by Owner prior to Final Completion so long as Design/Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Final Completion. When Owner reasonably believes that Final Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design/Builder overcomes the delay in achieving Final Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

(E) Time Is Of The Essence: All limitations of time set forth in this Contract are material and time is of the essence of the Contract.

## **ARTICLE 9 ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN/BUILDER**

(A) Design/Builder To Perform All Work Required By The Contract: The intent of this Contract is to require complete, correct and timely execution of the Design Services and the Construction Work. Any and all Design Services that may be required, reasonably implied, or reasonably inferred by the Contract, or any part of it, as necessary to produce the intended result shall be provided by Design/Builder for the Design Services Fee as provided in Article 10 of this Contract. In addition, any and all Construction Work that may be required, reasonably implied, or reasonably inferred by the Contract, or any part of it, as necessary to produce the intended result shall be provided by Design/Builder for the Guaranteed Maximum Price as provided in Article 10 of this Contract.

(B) Strict Compliance With The Contract Documents: All Construction Work performed by Design/Builder shall be in strict compliance with this Contract. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with the Contract is defective.

(C) Supervision Of The Construction Work: The Construction Work shall be strictly supervised and directed using Design/Builder's best and highest skill and effort. Design/Builder shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of Design/Builder.

(D) Warranty Of Construction Workmanship And Materials: Design/Builder warrants and guarantees to Owner that all labor furnished to perform the Construction Work under the Contract will be

competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only first-class results in strict compliance with the Contract, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Contract, and that the Construction Work will be of high quality, free from faults and defects and in strict conformance with the Contract. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Design/Builder's warranty.

(E) Commencement Of Guarantee And Warranty: Special or specific guarantees and warranties which are required by the Contract to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work.

(F) Design/Builder's Schedule Of Construction: Design/Builder, within fifteen (15) days after the Commencement Date, shall submit to the Director for his information, and shall comply with, Design/Builder's Schedule of Construction for completing the Construction Work by the Scheduled Completion Date. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path management ("CPM") schedule in a form acceptable to Owner. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to Owner. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design/Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Contract. No claim for an increase in the Guaranteed Maximum Price ("GMP") shall be allowed as a result of Design/Builder basing the GMP upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

(G) Record Copy Of Contract Documents: Design/Builder shall continuously maintain at the site, for the benefit of Owner, an updated copy of this Contract, including one record copy of the Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Design/Builder shall maintain at the site, for the benefit of Owner, a copy of all Shop Drawings, Product Data, Samples, and other Submittals. Upon Final Completion of the Construction Work, or upon the Director's request, all of the documents described in this Paragraph shall be finally updated and delivered to Owner and shall become the property of Owner.

(H) Review And Approval Of Submittals: Design/Builder shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that the Project will be constructed in a timely fashion in strict compliance with the Contract. No deviation from, substitution for, or other modification from the Contract Documents shall be allowed by Design/Builder in a shop drawing or submittal without written approval, in the form of a Change Order, from Owner. Design/Builder shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Design/Builder also warrants it will use its best independent professional judgment in its review to determine compliance with the Contract Documents.

(I) Owner's Option To Review Submittals: Owner shall also, in its discretion, have the right to review and approve Submittals, and if Owner so elects, Design/Builder shall not perform any portion of the Construction Work as to which Owner has required submittal and review until such Submittal has been approved by the Director. Approval by the Director, however, shall not be evidence that Construction Work installed pursuant to the Director's approval conforms to the requirements of the Contract nor shall such approvals relieve Design/Builder of any of its responsibilities or warranties

under the Contract. If Owner elects to review Submittals, Design/Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Design/Builder shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to Owner. Shop Drawings and other Submittals from Design/Builder do not constitute a part of this Contract.

(J) Procurement And Review Of Warranties: Design/Builder shall procure from all Subcontractors and Suppliers and shall transmit to the Director, all warranties required by the Contract. Design/Builder shall review all such warranties and shall certify to Owner that the warranties are in strict compliance with the requirements of the Contract.

(K) Procurement Of Operations And Maintenance Documentation: Design/Builder shall prepare or procure and shall transmit to the Director all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

(L) As-Built Drawings: Design/Builder shall prepare and provide to the Director a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

(M) Compliance With Labor Laws: Design/Builder shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

(N) Testing, Inspections, And Approvals: Design/Builder shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Design/Builder shall submit certified results of such tests to Owner. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Design/Builder shall assume full responsibility therefore, pay all costs in connection therewith and furnish to Owner the required certificates of inspection, testing or approval.

(O) Owner's Regulations And Applicable Laws: Design/Builder shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by Owner. Design/Builder warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Design/Builder in connection with the Construction Work to be performed under the Contract.

(P) Compliance With Construction Regulations: Design/Builder shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design/Builder, and Design/Builder shall fully indemnify and hold Owner harmless from all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, **REGARDLESS OF**

**A CONCURRENT CONTRIBUTION BY OWNER, THROUGH NEGLIGENCE OR OTHER WRONGFUL ACT, TO SUCH LOSS, DAMAGE, OR EXPENSE**, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of Owner, its officers, agents, or employees.

(Q) Permits, Licenses And Notices: All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Design/Builder. Design/Builder shall notify the Director when it has received said permits, licenses, and authorizations, and upon receipt shall supply the Director with copies of same. The originals of permits, licenses and authorizations shall be delivered to the Director upon completion of the Construction Work, and receipt of these documents by Owner shall be a condition precedent to final payment. Design/Builder shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

(R) Conditions To Site Access: While on Owner's property, all Design/Builder's employees and Subcontractors shall confine themselves to areas designated by the Director and will be subject to Owner's badge and pass requirements, if any, in effect at the site of the Construction Work.

(S) Site Safety And Security: Design/Builder shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Design/Builder shall at all times safeguard Owner's property and employees from injury or loss in connection with the performance of the Contract. Design/Builder shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Design/Builder shall protect Owner's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

(T) Repair Of Collateral Damage: Unless otherwise instructed by Owner, Design/Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Design/Builder's performance of the Construction Work.

(U) Cleaning The Site: Design/Builder shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Design/Builder shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Design/Builder's property therefrom.

(V) Owner's Access To Construction Work: At all times relevant to the Contract, Design/Builder shall provide access to the Construction Work to Owner and its designees without formality or other procedure.

(W) Decisions Regarding Aesthetic Effect: The Director's decisions in matters relating to aesthetic effect shall be final.

(X) Design/Builder To Remain An Independent Contractor: In performing both Design Services and Construction Work under this Contract, the relationship between Owner and Design/Builder is that of independent contractor, and the execution of this Contract does not change the independent status of Design/Builder. Design/Builder shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Design/Builder in the performance of this Contract shall be construed as making Design/Builder the agent, servant or employee of Owner, or making Design/Builder or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which Owner provides its employees.

## **ARTICLE 10 CONTRACT PRICE**

(A) Design Services Fee And Guaranteed Maximum Price: Owner shall pay, and Design/Builder shall accept, as full and complete payment for the Design Services, an amount not to exceed \$\_\_\_\_\_, payable on the basis of monthly billings as Design Services are completed and accepted by the Director. Prior to final completion and acceptance of Design Services, and upon presentation of final Design and Contract Documents to the Director for final review, Design/Builder shall also provide to Owner a proposed final Guaranteed Maximum Price ("GMP") that guarantees to Owner the price for which all Construction Work will be completed within the construction schedule and the Project Budget. If the parties cannot mutually agree to a satisfactory GMP, Owner has the right to terminate this Contract for convenience pursuant to the applicable provisions of Article 19. If the GMP submitted is acceptable to Owner, then this Contract shall be modified by supplemental agreement to approve the GMP and provide any necessary funding for performance of Construction Work. The Supplemental Agreement is deemed to include by reference the following provision upon acceptance of the GMP (blanks to be filled in with the establishment of the final GMP):

(1) Owner shall pay and Design/Builder shall accept the GMP for the performance of all Construction Work required by the Contract, and the performance of all other requirements of this Contract. The GMP shall consist of the Cost of the Construction Work as defined in the Contract, plus the Design/Builder's Management Fee, which is \$\_\_\_\_\_. Design/Builder, however, agrees and guarantees that the GMP shall not exceed \$\_\_\_\_\_, subject to additions and deductions by Change Order as provided in the Contract Documents. Owner agrees to perform its responsibilities so as to assist Design/Builder to facilitate the completion of the Construction Work and represents to Design/Builder that there will be sufficient funds available to pay Design/Builder up to the GMP of \$\_\_\_\_\_, as adjusted by any Change Order. **The GMP, unless changed by Supplemental Agreement or Change Order, represents the absolute limit of obligation or liability that Owner may ever have insofar as the cost for full and final completion of the Construction Work, and the total of all payments to Design/Builder or its Subcontractors, are concerned.** Should additional amounts be required to be expended, over and above the GMP, to achieve completion of the Construction Work, including Project construction, and payment to Design/Builder, in accordance with this Contract, liability for and payment of such additional amounts shall be the sole responsibility of Design/Builder and its Contract Surety herein, and Owner shall never be liable for same. Should the final Cost of the Construction Work and Design/Builder's compensation total less than the GMP, or any approved revision thereof, the difference shall inure to the benefit of Owner and no

claim for all or any portion of said difference shall be valid against or payable by Owner. **Owner's limitation of obligation or liability set out in this Paragraph shall be incontrovertible and unequivocal; any term or provision of this Contract, the Exhibits, attachments, or provisions incorporated by reference in or to this Contract, or of any Subcontract executed in furtherance of the anticipated Construction Work under the Contract shall not be construed or deemed to alter or waive this absolute condition.** Likewise, Design/Builder's absolute responsibility for the completion of the Project in accordance with the Contract Documents, including the Plans and Specifications, and within the agreed cost constraints, as well as Design/Builder's agreement to bear all costs in excess of the GMP without recourse to Owner, if such excess costs are necessary for the completion of the Construction Work, shall be incontrovertible and undisputable, and shall take precedence over all other terms and provisions of this Contract and the Exhibits hereto, no part of which shall be deemed to alter, diminish or waive such obligations.

(B) **Management of Construction Work:** In addition to the Construction Work Design/Builder will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Management Fee described in Paragraph (A) is paid. The services required are not intended in any manner to diminish the overall responsibility of Design/Builder for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

(C) **Cost Of Construction Work:** Owner agrees to pay Design/Builder for the Cost of the Construction Work as defined below, subject to submission by Design/Builder of all backup substantiation as may be reasonably required by the Director. Such payment shall be in addition to the Design/Builder's Management Fee specified above. However, in no event shall the sum of payments for the Cost of the Construction Work, Design/Builder's Management Fee and any other Design/Builder compensation exceed the Guaranteed Maximum Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall mean costs necessarily incurred in the performance of the Construction Work during the Construction Phase, and paid or payable by the Design/Builder, and not included in the Management Fee as set forth above. The following items are considered to be part of the Cost of the Construction Work:

(1) Wages paid for labor in the direct employ of the Design/Builder in the performance of the Work under any applicable collective bargaining agreement, or under a salary or wage schedule agreed upon by the Owner and Design/Builder, and including reasonable and customary benefits, if any, as may be payable with respect thereto. Such costs shall be at rates not higher than the standard pay in the locality of the Construction Work except with prior consent of the Owner, and shall include the items set forth below in this Article. The reasonable cost of drug testing for all of Design/Builder's employees utilized on or hired for the Project, whether management or labor, shall also be a Cost of the Construction Work.

(2) Salaries of Design/Builder's employees at or below the level of Project Design/Builder, when engaged on the Construction Work and stationed at the Field Office, in whatever capacity employed. Employees engaged, at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office and their salaries paid for that portion of their time spent on this Construction Work.

(3) Cost of reasonable and customary pension contributions, hospitalization insurance, medical insurance, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is reasonably based on wages, salaries, or other remuneration paid to employees of the Design/Builder and included in the Cost of the Construction Work under Subparagraphs (C)(1), (C)(2), (C)(24), and (C)(25) herein.

(4) With prior Owner approval, the proportion of reasonable travel and hotel expenses incurred outside of the Dallas/Fort Worth metropolitan area by the Design/Builder's officers or employees in discharge of duties directly connected with the Construction Work.

(5) Cost of all materials, supplies and equipment incorporated in the Construction Work, including costs of transportation thereof.

(6) Payments made by the Design/Builder to Subcontractors for Construction Work performed pursuant to Subcontract, entered into in the performance of this Contract.

(7) Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the Construction Work, and cost less salvage value of such items used but not consumed which remain the property of the Design/Builder.

(8) In connection with the Construction Work and management services and with prior Owner approval, rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Construction Work, whether rented from the Design/Builder or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, at rental charges consistent with those shown in the then current AED Manual. Provided further, that with respect to equipment and machinery rented from the Design/Builder, the rental rate shall not exceed 75% of the current AED Manual rental charges, and shall in no event cumulatively exceed the value of such equipment or machinery at the commencement of the rental period. Should rental charges reach such value for equipment and machinery rented from the Design/Builder, same shall thereafter belong to Owner, to be disposed of in accordance with Paragraph 10(E) below. Design/Builder shall furnish the Director with a list, to be updated monthly, of all equipment furnished for the Project for which Owner reimburses Design/Builder as a part of the Cost of the Construction Work. Equipment and machinery rented which becomes property of Owner pursuant to this paragraph shall be delivered to Owner upon final completion and acceptance by Owner of all Construction Work under the Project.

(9) Cost of the premiums for all bonds and insurance coverage required by this Contract, or deemed necessary by the Design/Builder, in the normal pursuit of the Construction Work. Premiums for company-wide coverage will be pro-rated on the basis of value of Construction Work completed during the premium period. The cost of (or payment of) all deductible amounts, not otherwise recoverable from third parties or not the result of a claim based upon Design/Builder's negligence, under any insurance furnished by Owner, or under insurance policies required by this Contract or deemed necessary by the Design/Builder in the normal pursuit of the Construction Work.

- (10) Taxes, if any, related to the Work. However, as Owner qualifies for exemption under Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act, Design/Builder shall alert all Subcontractors to prevent erroneous payment of taxes covered by this exemption. Owner will provide exemption certificates as needed to confirm this exemption.
- (11) Permit fees, licenses, tests, royalties; deposits lost for causes other than the Design/Builder's negligence.
- (12) Minor expenses such as telegrams, long-distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with and for the benefit of the Construction Work.
- (13) Cost of removal of debris. Removal of debris left by other contractors hired by the Owner is not a part of this Contract.
- (14) Cost incurred due to an emergency affecting the safety of persons and property.
- (15) Other costs incurred in the performance of the Construction Work, if and to the extent approved in advance in writing by Owner.
- (16) The reasonable, actual direct cost of data processing services as required for the Project. Such costs shall be specifically documented as having been done for the Project.
- (17) Legal costs growing out of prosecution of the Construction Work for the Owner will only be reimbursable if such were incurred for the direct benefit of the Owner and with prior written approval of Owner.
- (18) Cost or rental of temporary portable buildings and toilets as required; cost of utilities, ice, water, containers, cups, fire extinguishers, first-aid supplies, safety equipment, off-site storage space or facilities, progress photographs, or video tape records.
- (19) All reasonable costs and expenditures necessary for the operation of the field office, such as stationery, supplies, blueprinting, furniture, fixtures, office equipment, etc.
- (20) Costs incurred by the Design/Builder in preparing and maintaining progress schedules, budgets, and reports required hereby.
- (21) Service fees assessed by Associated General Contractors of America and the Associated Building Contractors, but only as they relate to the Construction Work.
- (22) The reasonable, actual direct cost of computer services, including jobsite and main office terminal, for purposes of field payroll preparation and control. Such costs shall be specifically documented as having been done for the Project.
- (23) Design/Builder shall be responsible for enforcing warranties and for obtaining correction and/or replacement of all defective Construction Work not constructed or installed in accordance with the Contract Documents. All such corrective or remedial Construction Work required by the Contract Documents shall be performed by the responsible Subcontractors under the terms of

their Subcontracts, without additional cost to the Owner. Costs incurred by Design/Builder to correct or remedy Construction Work performed by Design/Builder's own forces, or where the responsible Subcontractor fails to perform, shall **NOT** be a Cost of the Construction Work, and shall be Design/Builder's sole responsibility, at no additional cost to Owner; provided, however, Design/Builder shall be entitled to the proceeds of any Subcontractor maintenance bond, where such Subcontractor has defaulted in this regard.

(24) Salaries of Design/Builder's Project Design/Builder and Contract Design/Builder, Safety Engineer, M/WBE Coordinator, and Procurement Specialist (for coordinating, costing, scoping and purchasing of major Work items), earned after the date of approval and funding of the GMP, whether stationed at the Field Office or at the Main Office of the Design/Builder, for that portion of their time spent on this Construction Work.

(25) Where not otherwise included in the Cost of the Construction Work under Subparagraphs (C)(16), (C)(20), and (C)(22), cost of central accounting services in connection with the Construction Work, such as payment of invoices, maintaining material cost records, computer services, preparation of W-2 Reports, payroll tax reporting and preparation of other reports.

(D) Reconstruction Due to Casualty Loss: If, after a substantial loss from fire, flood, or similar cause not due to the default or neglect of the Design/Builder, the Design/Builder is put in charge of reconstruction, the Design/Builder shall be paid a management fee for its services proportionate to the Management Fee specified in this Contract. Any reconstruction work shall be considered part of the Scope of the Work, except that the Design/Builder's Management Fee under the GMP shall be adjusted accordingly, unless otherwise reimbursed by the proceeds of insurance, or through utilization of the Change Order procedure set out in this Contract.

(E) Discounts, Refunds, Sales of Surplus Materials: All discounts, if realized, for prompt payment shall belong to Owner and shall be accounted for in the applicable GMP line item. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall likewise belong to Owner, and Design/Builder and Owner shall make provisions so that they can be secured, the amounts thereof to be accounted for in the applicable line item.

(F) Costs Not Included As Part Of The Construction Work And Services: The following items of cost and expense are not included as part of the Cost of the Construction Work to be paid by Owner to Design/Builder:

(1) Except as specifically provided above, salaries, wages, and other compensation of Design/Builder personnel stationed at Design/Builder's principal office or offices.

(2) Design/Builder's home office overhead, including, but not limited to, any and all expenses associated with Design/Builder's principal office and offices other than at the Project site.

(3) Design/Builder's capital costs and expenses, including interest on capital utilized in the performance of this Contract.

(4) Rental cost for machinery or equipment except as expressly provided above.

(5) Cost and expense incurred by Design/Builder, its Subcontractors, consultants, or suppliers, or anyone directly or indirectly employed by any of them, when such costs or expenses are the result of their negligence or failure to perform any required contractual duty.

(6) Any and all cost or expense not specifically allowed pursuant to Paragraph 10(C) above.

(D) Any and all cash discounts, rebates, or refunds relating to payments made by Design/Builder shall accrue to Owner and shall be credited or paid to Owner at its election.

(E) Owner may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to Owner from Design/Builder, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to Owner has been reduced to judgment by a court.

## **ARTICLE 11 PAYMENT OF THE CONTRACT PRICE**

(A) Payment Procedure: Owner shall pay the Contract Price to Design/Builder in accordance with the procedures set forth in this Article 11 and, for purposes of the Construction Work, the applicable provisions of Article 9 of the General Conditions to the extent they do not conflict with this Article.

(B) Request for Payment for Design Services: As the Design Services progress, Design/Builder shall submit monthly statements for Design Services rendered, based upon a percentage of completion of the Design Services. If special services or reimbursable expenses are included as part of the Design Services Fee, such services shall be paid on the basis of the hourly rates or actual cost, as applicable, for those items as needed or required by Owner. Owner shall make monthly payments for Design Services in the amount shown by the Design/Builder's approved monthly statements and other required documentation submitted within thirty (30) days after receipt by Owner of a properly prepared and certified request for payment for Design Services. Nothing contained in this Subparagraph shall require Owner to pay for any Design Services which are unsatisfactory as determined by the Director, or which are not submitted in compliance with the terms of this Contract, and payment may be withheld until the Design Services at issue are corrected or compliance is achieved. Progress payments for Design Services under this Contract shall be up to but shall not exceed 95% of the total Design Services Fee; upon final completion and acceptance of the Construction Work, the balance of the Design Services Fee will be paid along with any final payment for the Construction Work.

(C) Request For Payment for Construction Work: On or before the twentieth day of each month, Design/Builder shall submit to Owner its request for payment in such form, and with supporting documentation, as Owner may require. Each request shall seek payment for the Cost of the Construction Work, as defined and allowed by Paragraph 10(C) hereinabove, performed during the preceding month. Payment for the Cost of the Construction Work shall also include such portion of Design/Builder's Management Fee as is allowed by Paragraph 11(E) below. The supporting documentation for each request for payment shall include, but not be limited to, certified payrolls, petty cash accounts, receipted invoices, and invoices with check vouchers attached. Similar documentation shall be included from each of Design/Builder's Subcontractors and consultants. The request for payment shall be verified under oath by an officer of Design/Builder.

(D) Time For Payment: Within thirty (30) days after receipt by Owner of a properly prepared and certified request for payment, Owner shall make payment to Design/Builder in an amount equal to the total of the Cost of the Construction Work and related services properly performed or furnished as of the date covered by such request for payment, less retainage in the amount of five percent (5%), and less any payments previously made by Owner to Design/Builder.

(E) Payment Of The Management Fee: In addition to the payment of the Cost of the Construction Work and related services as set forth above, Owner will pay Design/Builder its Management Fee monthly during performance of Construction Work, based upon the percentage of Construction Work completed in accordance with the Contract. From each scheduled Management Fee payment, Owner shall further withhold retainage in the amount of five percent (5%).

(F) Right To Audit: Owner shall be entitled to rely upon the accuracy and completeness of the information furnished by Design/Builder in connection with any request for payment under this Contract. Owner reserves the right to audit, at Owner's election, all of Design/Builder's records and billings relating to the performance of Design Services or Construction Work under this Contract. Design/Builder agrees to retain its Project records for a minimum of three (3) years following completion of all Services under this Contract. Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Contractor under this Contract. City is granted the right to audit, at City's election, all of Contractor's records and billings relating to the performance of this Contract. Contractor agrees to retain such records for a minimum of three (3) years following completion of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this subsection. In the event Owner determines that Design/Builder has been paid any sums not due Design/Builder, same shall be reimbursed by Design/Builder to Owner within forty-eight (48) hours of demand by Owner.

(G) Condition Precedent To Final Payment: Notwithstanding any other provision in the Contract Documents, final payment shall not be made to Design/Builder until Design/Builder has fully performed all of its obligations under the Contract and the Design Services and the Construction Work are fully complete.

(H) Owner's Review Of Pay Requests: Owner shall have the right to review all pay requests for the Design Services and the Construction Work to determine whether the quantity and quality of the Design Services and the Construction Work is as represented in the pay request and as required by the Contract.

(I) Conditions Precedent To Payment: In addition to all other conditions precedent contained in this Contract, including but not limited to the provisions of Subparagraphs 11(G) and 12(G), it shall be a condition precedent to payment of any pay request under this Contract that Design/Builder has submitted properly updated or revised schedules for the performance of its Design Services and Construction Work as required by this Contract.

(J) Passage of Title to Construction Work: Notwithstanding progress payments made by Owner under this Contract, title to Construction Work under this Contract does not pass to Owner until final completion and acceptance of the Project by Owner, at which point title to all Construction Work is deemed to pass immediately to Owner. The risk of loss regarding completed Construction Work that is paid for by Owner prior to final completion and acceptance remains with Design/Builder.

(K) Design/Builder's Use Of Progress Payments: Upon receipt of any payment from Owner, Design/Builder shall promptly pay all Subcontractors, materialmen, laborers, and Suppliers such amounts as they are entitled for the Construction Work covered by such payment. Design/Builder shall also comply with the requirements of the General Conditions relating to payments to Subcontractors.

(L) Use Of Joint Checks: If Owner becomes informed that Design/Builder has not paid a Subcontractor, materialman, laborer, or supplier as provided herein, Owner shall have the right, but not the duty, to issue checks and payment then or thereafter otherwise due to Design/Builder naming Design/Builder and any such Subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit Owner to repeat the procedure in the future nor to create any contractual or other relationship of any kind between Owner and such person or entity.

(M) Payment Not A Waiver Or Acceptance: No payment to Design/Builder, nor any use or occupancy of the Project by Owner, shall be interpreted or construed to constitute acceptance of any Construction Work not in strict compliance with the Contract, and Design/Builder expressly accepts the risk that defective Construction Work may not be detected (1) during any inspection by Owner, (2) prior to making of any payment to Design/Builder, or (3) before Owner's occupancy of the Project.

(N) Withholding Of Payment: Owner shall have the right to refuse to make payment for Construction Work and, if necessary, may demand the return of a portion or the entire amount previously paid to Design/Builder in an amount then believed by Owner to be adequate to cover the penalties, damages, and potential losses resulting or likely to result from:

- (1) the quality of a portion, or all, of Design/Builder's Construction Work not being in accordance with the requirements of this Contract;
- (2) the quantity of Design/Builder's Construction Work not being as represented in Design/Builder's pay request, or otherwise;
- (3) Design/Builder's rate of progress being such that, in Owner's opinion, Substantial Completion, Final Completion, or both, may be inexcusably delayed;
- (4) Design/Builder's failure to use Contract funds, previously paid Design/Builder by Owner, to pay Design/Builder's Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment suppliers;
- (5) evidence that the balance of the Construction Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (6) claims made, or likely to be made, against Owner or its property;
- (7) loss or damage caused by Design/Builder;
- (8) Design/Builder's failure or refusal to perform any of its obligations to Owner; or

- (9) any other basis for withholding of payment specified in the General Conditions.

In the event that Owner makes written demand upon Design/Builder for amounts previously paid by Owner as contemplated in this Paragraph 11(N), Design/Builder shall promptly comply with such demand.

(O) Limitation On Duty To Pay: In addition to the grounds for withholding payment as set forth in Paragraph 11(N) hereinabove, Owner and Design/Builder further agree as follows:

(1) Prior to Owner's approval of the Guaranteed Maximum Price and execution of a supplemental agreement, Design/Builder shall submit to Owner a Schedule of Values allocating the Guaranteed Maximum Price to the various portions of the Construction Work. Such Schedule of Values shall be prepared in such form, with such detail, and supported by such data as Owner may require to substantiate its accuracy. Design/Builder shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by Design/Builder shall constitute a material breach of this Contract. The Schedule of Values shall only be utilized as a basis for evaluating Design/Builder's request(s) for payment and shall only constitute such basis after it has been acknowledged in writing by Owner.

(2) Each request for payment for Construction Work shall include a certification by Design/Builder of the percentage of completion, as of the date of such request for payment, of those portions of the Construction Work as identified in the Schedule of Values. Design/Builder shall furnish to Owner such documentation or other supporting data as Owner may request in order to verify the percentage of completion certified by Design/Builder.

(3) Owner shall have no obligation to make payment to Design/Builder for any Design Services or Construction Work where the amount for which such payment is requested is in excess of the amount allocated in the Schedule of Values for Construction Work based upon the percentage of completion as of the date of the request for payment.

(P) Unexcused Failure To Pay: If Owner, without cause or basis, fails to pay Design/Builder any amounts due and payable under this Contract to Design/Builder within thirty (30) days after the date established in this Contract for payment of such amounts, then the payment shall bear interest in accordance with the Texas Prompt Payment Act, as amended. Provided, however, that Owner shall not be liable for interest due on any late or delayed progress payment or final payment caused by any good faith claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the request for payment or as a precondition to payment under the Contract Documents, or due to any payment Owner has a right to withhold or not certify under the Contract Documents.

## **ARTICLE 12 SUBSTANTIAL AND FINAL COMPLETION**

(A) Substantial Completion: "Substantial Completion" means that stage in the progression of the Construction Work, as approved by Owner in writing, when the Project is sufficiently complete in accordance with the Contract that Owner can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the

receipt by Owner of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. Owner reserves the right to occupy and use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

(B) Determination Of Substantial Completion: When Design/Builder believes that the Construction Work is substantially complete, Design/Builder shall notify the Director in writing and shall submit to Owner a list of items remaining to be completed or corrected. The Director (or an independent consultant hired by Owner) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of Owner, Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of Owner and Design/Builder for Project security, maintenance, heat, utilities, damage to the Construction Work, and insurance, and shall fix the date, not longer than thirty (30) days after the established date of Substantial Completion, within which Design/Builder shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Design/Builder for its written acceptance of the responsibilities assigned to it in such certificate.

(C) Payment Upon Substantial Completion: Upon Substantial Completion of the Construction Work, and upon execution by both Owner and Design/Builder of the Certificate of Substantial Completion, Owner shall pay Design/Builder, within thirty (30) days, all sums due Design/Builder, including such amount of retainage as the Owner in its sole discretion wishes to pay based upon the value of remaining performance, less the reasonable costs, as determined by Owner in Owner's sole discretion, for completing all incomplete Construction Work and Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and handling all outstanding or threatened claims.

(D) Final Completion: "Final Completion" means the completion of all Design Services and all Construction Work required by, and in strict compliance with, the Contract, including Design/Builder's provision to Owner of all documents and things required to be provided by the Contract.

(E) Determination Of Final Completion: When Design/Builder believes that all of the Construction Work is finally complete, and Design/Builder is ready for a final inspection, Design/Builder shall so notify the Director in writing. The Director (or an independent consultant hired by Owner) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then Owner will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

(F) Payment After Final Completion: Owner shall make final payment of all remaining sums due to Design/Builder within thirty (30) days after Final Completion as reflected by Owner's Certificate for Final Payment, provided that all documents and things required to be delivered to Owner under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

(G) Conditions Precedent To Final Payment: Prior to being entitled to receive final payment and as a condition precedent thereto, Design/Builder shall furnish Owner, in the form and manner required by the Director, the following:

- (1) Owner's standard Affidavit of Final Payment and Release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing Owner from all claims that Design/Builder had or might have asserted during the performance of this Contract;
- (2) if required by Owner, separate releases of lien, lien waivers, or affidavits of payment from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against Owner or Owner's property;
- (3) consent of surety to final payment;
- (4) a complete set of the as-built drawings and the record set of Contract Documents; and
- (5) all product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

(H) Acceptance Of Final Payment A Waiver: Acceptance by Design/Builder of final payment shall constitute a waiver and release of all claims against Owner by Design/Builder except for those claims previously made in writing against Owner by Design/Builder, pending at the time of final payment and specifically identified on Design/Builder's pay request for final payment as unsettled at the time it submits its pay request.

### **ARTICLE 13 OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES**

In addition to payment, Owner shall undertake to perform the following:

- (A) Provide Project Information: Owner shall provide Design/Builder with information regarding Owner's requirements for the Project including any desired or required design or construction schedule.
- (B) Review Of Documents: Owner shall review any documents submitted by Design/Builder requiring Owner's decision, and shall render any required decisions pertaining thereto.
- (C) Provide Notice Of Defects: In the event Owner knows of any material fault or defect in the Construction Work, nonconformance with the Contract, or of any errors, omissions or inconsistencies in the Design Documents, then Owner shall give prompt notice thereof in writing to Design/Builder.
- (D) Access To The Site And The Construction Work: Owner shall provide Design/Builder access to the site and to the Construction Work, and shall provide Design/Builder with such information, existing and reasonably available, necessary to Design/Builder's performance of the Contract as Design/Builder may request.

(E) Cooperation To Secure Permits, Licenses, Approvals, And Authorizations: Owner shall cooperate with Design/Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

(F) Timely Performance: Owner shall perform the duties set forth in this Article 13 in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design/Builder's Design Services and of the Construction Work.

(G) Owner's Reviews, Inspections, Approvals, And Payments Not A Waiver: Owner's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Design/Builder shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with Owner's construction program and requirements. No review, inspection, or approval by Owner of the Construction Work or documents shall relieve Design/Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or Contract Documents shall not relieve Design/Builder of responsibility for the strict performance of its obligations under the Contract. Payment by Owner pursuant to the Contract shall not constitute a waiver of any of Owner's rights under the Contract or at law, and Design/Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.

(H) Delay Or Forbearance Not Waiver: Owner's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Design/Builder under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

(I) Documents Requested By Design/Builder: Owner shall furnish to Design/Builder, prior to the execution of this Contract, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Design/Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, Owner does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefor. If Design/Builder requests it in writing, Owner shall also furnish surveys, legal limitations, utility locations (if known), and a legal description of the Project site.

(J) Approvals And Easements: Owner shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Design/Builder shall render such assistance as Owner may request in obtaining such easements, certificates of occupancy, and the like.

(K) Right To Stop Construction Work: In the event Design/Builder fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, Owner may, at its option, instruct Design/Builder to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from Owner in writing, Design/Builder shall immediately cease and desist as instructed by Owner and shall not proceed further until the cause for Owner's instructions has been corrected, no longer exists, or Owner instructs that the Construction Work may resume.

(L) Owner's Right To Perform Construction Work: In the event Owner issues such instructions to stop Construction Work, and in the further event that Design/Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to Owner that the cause of such instructions will be eliminated or corrected, then Owner shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Design/Builder shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Paragraph 13(K) and this Paragraph 13(L) are in addition to, and without prejudice to, any other rights or remedies Owner may have against Design/Builder, including the rights to terminate or withhold payment as provided herein.

#### **ARTICLE 14 PROJECT DOCUMENTATION**

(A) Maintenance Of Project-Related Records: Design/Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than three (3) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

(B) Availability Of Project-Related Records To Owner: All Project Records which are in the possession of Design/Builder or Design/Builders Subcontractors shall be made available to Owner for inspection and copying upon Owner's request at any time. Additionally, such records shall be made available upon request by Owner to any state, federal or other regulatory authorities, and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Design/Builder.

#### **ARTICLE 15 PERSONNEL, SUBCONTRACTORS AND SUPPLIERS**

(A) Subcontractor Defined: A "Subcontractor" means an entity which has a direct contract with Design/Builder to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing specially fabricated equipment and materials for the Project.

(B) Supplier Defined: A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

(C) Objections To Subcontractors: Upon execution of this Contract, and at such later times as may be applicable, Design/Builder shall furnish Owner, in writing, the names of persons or entities proposed by Design/Builder to act as Subcontractors on the Project. Design/Builder shall provide such information regarding such proposed Subcontractors as Owner deems necessary. Owner shall promptly reply to Design/Builder, in writing, stating any objections Owner may have to such proposed Subcontractors. Design/Builder shall not enter into a subcontract with an intended Subcontractor with

reference to whom Owner objects. Any consent or failure to reject by Owner shall in no way relieve Design/Builder of any of its duties or warranties under the Contract.

(D) Terms Of Subcontracts: All subcontracts and purchase orders with Subcontractors shall afford Design/Builder rights against the Subcontractor which correspond to those rights afforded to Owner against Design/Builder under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Subcontractor of Design/Builder, and a provision to this effect shall be inserted into all agreements between Design/Builder and its Subcontractors.

(E) Design/Builder Responsible For Acts Of Its Subcontractors: Should Design/Builder subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Design/Builder from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Design/Builder shall be responsible for all and any acts, defaults, omissions or negligence of its Subcontractors, Suppliers, and consultants.

(F) Personnel: In accordance with Article 2 above, Design/Builder shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Design/Builder shall designate one such person as the Project Design/Builder. Absent written instruction from Design/Builder to the contrary, the Project Manager/Superintendent shall be deemed to be Design/Builder's authorized representative and shall be authorized to receive and accept any and all communications from Owner. Key design and supervisory personnel assigned by Design/Builder to this Project are as follows:

<b>NAME</b>	<b>FUNCTION</b>
_____	_____
_____	_____
_____	_____
_____	_____

Evidence of the above-named personnel's competence, such as a resume, shall be provided to Owner prior to the personnel beginning performance of the function indicated. So long as the individuals named above remain actively employed or retained by Design/Builder, or any related entity or affiliate thereof, they shall perform the functions indicated next to their names unless Owner agrees to the contrary in writing or unless Owner requests removal of any such individual from the Project. In the event Owner requests the removal of any of the individuals named above, Design/Builder shall immediately comply and shall immediately replace such individual with a qualified substitute to whom Owner makes no objection. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, Design/Builder shall be bound by the provisions of this Paragraph 15(F) as though such individuals had been listed above.

(G) Removal Of Subcontractors And Personnel: If, at any time during the course of the Project, Owner reasonably determines that the performance of any Subcontractor or any member of Design/Builder's staff construction Working on the Project is unsatisfactory, Owner's Representative may require Design/Builder to remove such Subcontractor or staff member from the Project

immediately and replace the staff member at no cost or penalty to Owner for delays or inefficiencies the change may cause.

## **ARTICLE 16 CHANGES AND EXTENSIONS OF TIME**

(A) Owner's Right To Order Changes: Changes in the Design Services or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by Owner without invalidating the Contract. Such changes shall be communicated by Change Order, Field Order or supplemental agreement, as applicable. Design/Builder shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the following terms and conditions as set forth in this Article 16.

(B) Changes And Extensions of Time: All change orders, changes requested by Design/Builder, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by Articles 7 and 8 of the General and Supplementary General Conditions. All changes to the scope of Design Services or extensions of the agreed upon Design Schedule during the design process shall be made by mutual agreement of Owner and Design/Builder, and claims for an increase in design compensation due to a change in the scope of design construction Work or for an extension of time to the Design Schedule shall be made in writing within seven (7) calendar days after occurrence of the event that gives rise to the claim. All requests for additional compensation due to a change in the scope of Design Services, and all requests for an extension of time to the Design Schedule, shall include sufficient backup documentation for Owner to reasonably understand the request and the amount of time or compensation requested and to determine the merits of the request.

(C) Adjustments To Guaranteed Maximum Price Or Contract Time: Upon the occurrence of a change order for Construction Work as set forth in Paragraph 16(A) hereinabove which increases the Cost of the Construction Work, the Guaranteed Maximum Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed by Paragraph 10(B) hereinabove. The failure of Design/Builder to provide notice in writing to Owner in accordance with Paragraph 16(B) of any request for an increase in the Guaranteed Maximum Price or for an extension of the Contract Time shall constitute a waiver by Design/Builder of any entitlement thereto.

(D) Continuing Duty To Perform Construction Work And Make Payment: In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Design/Builder shall continue to diligently perform the Design Services and the Construction Work, including any change directed by Owner by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement, subject to and in accordance with the provisions of Subparagraph 7.1(e) of the General Conditions.

(E) Fiduciary Relationship: Design/Builder recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Design/Builder and Owner and agrees that it shall at all times in good faith use its best efforts to advance Owner's interests and agrees to perform the Design Services and the Construction Work in the highest professional manner.

## **ARTICLE 17 CLAIMS BY DESIGN/BUILDER**

(A) Terms And Conditions Of Claims: Claims by Design/Builder against Owner are subject to the terms and conditions of this Article 17, and strict compliance with this Article shall be a condition precedent to any liability of Owner in regard to a claim.

(B) Claim Procedures: All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the procedures set forth in Paragraph 4.3 of the General Conditions and this Contract, with this Contract controlling in the event of a conflict.

(C) Continuous Duty To Provide Documentation: Design/Builder shall provide, and continue to provide, to Owner all such documentation, including cost and time records, as and when Owner may request so that Owner may evaluate Design/Builder's claim.

(D) Duty To Continue Performance: Design/Builder shall continue its performance under this Contract regardless of the existence of any claims submitted by Design/Builder against Owner.

(E) Claims For Increase In Compensation: In the event Design/Builder seeks to make a claim for an increase in Design Services compensation or in the Guaranteed Maximum Price, as a condition precedent to any liability of Owner for any claim, Design/Builder shall strictly comply with the requirements of Paragraph 17(B) above and such notice shall be given by Design/Builder before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Design/Builder of any claim.

(F) Limit Of Owner's Liability For Increased Compensation: In connection with any claim by Design/Builder against Owner for compensation in excess of the Guaranteed Maximum Price or the not-to exceed limit of the Design Services compensation, any liability of Owner shall be strictly limited to the Cost of the Construction Work and Design Services as defined and allowed in Paragraph 10(C) above and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Design/Builder or its Subcontractors. Owner shall not be liable to Design/Builder for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which Owner would not be liable to Design/Builder under the terms of the Contract. As a condition precedent to Owner's liability to Design/Builder for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Design/Builder and such claims must have been submitted to Owner by Design/Builder in strict compliance with all the requirements of this Article 17. Owner shall not be liable to Design/Builder for claims of third parties including Subcontractors, unless and until the liability of Design/Builder has been established in a court of competent jurisdiction.

(G) Owner's Right to Order Acceleration And To Deny Claimed And Appropriate Time Extensions, In Whole Or In Part: Design/Builder acknowledges and agrees that Substantial Completion of the Construction Work by or before the Scheduled Completion Date is, or may be, of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If Design/Builder falls behind the approved construction schedule for whatever reason, Owner shall have the right, in the Owner's sole discretion, to order Design/Builder to develop a recovery schedule as described in Paragraph 3.10 of the General Conditions or to accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time

completion date or such other date as Owner may reasonably direct and, upon receipt, Design/Builder shall take all action necessary to comply with the order. In such event, any possible right, if any, of Design/Builder to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (G).

(2) In the event that Design/Builder is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Subparagraph 4.3(a) of the General Conditions, Owner shall have the right, in Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to Design/Builder provided within fourteen (14) days after receipt of Design/Builder's Claim. If Owner denies Design/Builder's claim for an extension of Contract Time under this Clause (G)(2), either in whole or in part, Design/Builder shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(3) If Design/Builder would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by Owner if not for the need and right to accelerate, Design/Builder may initiate a claim for acceleration costs pursuant to Subparagraph 4.3(a) of the General Conditions. Any resulting claim for acceleration costs properly initiated by Design/Builder under Subparagraph 4.3(a) of the General Conditions shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Construction Work back within the then existing approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by Design/Builder and approved in writing by Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, not to exceed 5%, will be allowed on the claimed acceleration costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM.** The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (G)(3).

(H) Claims Resolved By Change Order: The resolution of any claim under this Article 17 shall be reflected by a Change Order or Supplemental Agreement executed by Owner and Design/Builder.

## ARTICLE 18 UNCOVERING AND CORRECTING CONSTRUCTION WORK

(A) Design/Builder Not To Cover Construction Work Contrary To Requirements: If any of the Construction Work is covered, concealed or obscured contrary to the written request of Owner, or contrary to any provision of the Contract, said Construction Work shall, if required by Owner, be uncovered for inspection and shall be properly replaced at Design/Builder's expense without change in the Contract Time.

(B) Owner's Right To Order Uncovering Of Any Construction Work: If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 18(A) above, it shall, if required by Owner, be uncovered for inspection. If such Construction Work conforms strictly

with the Contract, the cost of uncovering and proper replacement shall be charged to Owner. If such Construction Work does not strictly conform with the Contract, Design/Builder shall pay the cost of uncovering and proper replacement.

(C) Duty To Correct Rejected Construction Work: Design/Builder shall immediately proceed to correct Construction Work rejected by Owner as defective or failing to conform to the Contract. Design/Builder shall pay all costs and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

(D) Duty To Correct Defective Construction Work Discovered After Completion: In addition to its warranty obligations set forth elsewhere in the Contract Documents, including but not limited to the General Conditions, Design/Builder shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from Owner. This obligation shall survive final payment by Owner and termination of the Contract.

(E) No Period Of Limitation Established: Nothing contained in Paragraph 18(D) shall establish any period of limitation with respect to other obligations which Design/Builder has under the Contract Documents. Establishment of the one-year time period in Paragraph 18(D) above relates only to the duty to Design/Builder to specifically correct the Construction Work.

(F) Owner's Option To Accept Defective Construction Work: Owner may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. Owner shall be entitled to a reduction in the GMP regardless of whether Owner has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the GMP, if any, is insufficient to compensate Owner for the acceptance of defective or nonconforming Construction Work, Design/Builder shall, upon written demand from Owner, pay Owner such additional compensation for accepting defective or nonconforming Construction Work.

## **ARTICLE 19 SUSPENSION AND TERMINATION**

(A) Suspension Of Performance: Owner may for any reason whatsoever suspend performance under the Contract. Owner shall give written notice of such suspension to Design/Builder specifying when such suspension is to become effective.

(B) Ceasing Performance Upon Suspension: From and upon the effective date of any Suspension ordered by Owner, Design/Builder shall incur no further expense or obligations in connection with this Contract, and Design/Builder shall cease its performance. Design/Builder shall also, at Owner's direction, either suspend or assign to Owner any of its open or outstanding subcontracts or purchase orders.

(C) Claim For Costs Of Suspension: In the event Owner directs a suspension of performance under this Article 19, through no fault of Design/Builder, and provided Design/Builder submits a proper claim as provided in this Contract, Owner shall pay Design/Builder as full compensation for such suspension Design/Builder's reasonable costs, actually incurred and paid, of:

- (1) demobilization and remobilization, including such costs paid to Subcontractors;
- (2) preserving and protecting Construction Work in place;
- (3) storage of materials or equipment purchased for the Project, including insurance thereon;  
and
- (4) performing in a later, or during a longer, time frame than that contemplated by this Contract.

(D) Resumption Of Construction Work After Suspension: If Owner lifts the suspension it shall do so in writing, and Design/Builder shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Design/Builder has exercised its right of termination as provided herein.

(E) Termination By Owner For Convenience: Owner reserves the right, for any reason whatsoever (including, but not limited to, nonappropriation of funding), or without reason, terminate performance under the Contract by Design/Builder for convenience. Owner shall give thirty (30) calendar days advance written notice of termination for convenience to Design/Builder. Design/Builder shall incur no further obligations in connection with the Contract and Design/Builder shall stop Design Services and the Construction Work when such termination becomes effective. Design/Builder shall also, at Owner's direction, either terminate or assign to Owner outstanding orders and subcontracts. Design/Builder shall settle the liabilities and claims arising out of any terminated subcontracts and orders. Owner may direct Design/Builder to assign Design/Builder's right, title and interest under terminated orders or subcontracts to Owner or its designee. Design/Builder shall transfer title and deliver to Owner such completed or partially completed Design Documents, Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Design/Builder has.

(F) Submission Of Termination Claim And Compensation For Termination For Convenience: When terminated for convenience, Design/Builder shall be compensated as follows:

- (1) Design/Builder shall submit a termination claim to Owner specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by Owner. If Design/Builder fails to file a termination claim within three (3) months from the effective date of termination, Owner shall pay Design/Builder an amount derived in accordance with Subparagraph (3) below.
- (2) Owner and Design/Builder may agree to the compensation, if any, due to Design/Builder under this paragraph.
- (3) Absent agreement to the amount due to Design/Builder, Owner shall pay Design/Builder, as full compensation for termination for convenience, the following amounts:
  - (a) the Cost of the Construction Work and Services, as defined and allowed by Paragraph 10(B) above, to the extent incurred or paid prior to receipt by Design/Builder of the notice of termination;

(b) such portion of Design/Builder's Fee which is earned and unpaid as of the date of receipt by Design/Builder of the notice of termination; and

(c) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 19(E) hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract.

In no event shall Design/Builder be entitled to recover lost profits or other incidental or consequential damages from Owner on account of a termination for convenience, or an erroneous termination for cause as described below.

(G) Termination By Owner For Cause: If Design/Builder does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then Owner may by written notice to Design/Builder, without prejudice to any other right or remedy against Design/Builder or others, terminate the performance of Design/Builder and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Design/Builder shall not be entitled to receive any further payment until the Construction Work is finished.

(H) Erroneous Termination For Cause: In the event the employment of Design/Builder is terminated by Owner for cause pursuant to Paragraph 19(G) and it is subsequently determined by a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Paragraph 19(E) and the provisions of Paragraph 19(F) regarding compensation shall apply.

## **ARTICLE 20 OWNERSHIP OF DOCUMENTS**

(A) Documents Considered Owner's Property: The Design Documents and the Contract Documents, including but not limited to, the drawings, specifications and other documents or things prepared by Design/Builder for the Project, shall immediately become and be the sole property of Owner. Any documents furnished by Owner shall remain the property of Owner. Design/Builder may be permitted to retain copies of the Design Documents and Contract Documents and any documents furnished by Owner for its records with approval in writing of Owner; provided, however, that in no event shall Design/Builder use, or permit to be used, any portion or all of such documents on other projects without Owner's prior written authorization.

## **ARTICLE 21 INDEMNITY**

General Indemnity: Design/Builder agrees to defend, indemnify and hold Owner, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Design/Builder's

breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Design/Builder, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of Owner, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence or fault of Design/Builder and Owner, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the law of the State of Texas, without, however, waiving any governmental immunity available to the Owner under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Where Design/Builder performs work with its own forces, the indemnity provisions contained in the General Conditions shall apply and shall control in the event of any conflict with this indemnity provision.

## **ARTICLE 22 INSURANCE**

(A) General Insurance Requirements: Design/Builder shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to Owner, the minimum insurance coverage contained in Exhibit B, attached to and made a part of this Contract.

(B) Liability Notwithstanding Insurance: Approval, disapproval or failure to act by Owner regarding any insurance supplied by Design/Builder or its Subcontractors shall not relieve Design/Builder of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. The bankruptcy or insolvency of Design/Builder's insurer or any denial of liability by Design/Builder's insurer shall **NOT** exonerate Design/Builder from the liability or responsibility of Design/Builder as set forth in this Contract.

## **ARTICLE 23 SURETY BONDS**

(A) Performance Bond And Payment Bond: Upon execution of this Contract, Design/Builder shall furnish to Owner separate performance and payment bonds in the penal sum of 100% of the GMP amount, or the amount of the Project construction budget if a GMP has not been established as of the date of execution of this Contract. If the GMP established under Article 10 of this Contract is less than the Project Construction Budget, Design/Builder may furnish a rider to adjust the amount of the bonds to reflect the GMP, and shall reflect the adjusted premium cost appropriately in the general conditions shown as a part of the GMP. The bonds shall be written by a corporate surety or sureties authorized to conduct an insurance business in the State of Texas and licensed to issue surety bonds in the State of Texas, and otherwise acceptable to Owner. The bonds shall conform to the requirements of Chapter 2253, Texas Government Code, as amended, and Article 7.19-1, Texas Insurance Code, as amended. The bonds shall be written on forms approved for use by Owner, a copy of which bond forms are attached to and made a part of this Contract as Exhibit C.

(B) Subcontractor Bonds: Each Subcontractor whose Subcontract is greater than \$25,000 but less than or equal to \$100,000 will likewise be required, as a condition of their Subcontract, to execute

similar Payment Bonds (in the case of Subcontracts greater than \$100,000, similar Performance and Payment Bonds will be required) in the full amount of each Subcontract, naming both Design/Builder and Owner as joint obligees. Subcontractors not required to provide a payment bond will not be paid progress payments, but shall be paid upon final completion and acceptance of their Construction Work.

## **ARTICLE 24 CONFLICT OF INTEREST OF CITY EMPLOYEES**

The following section of the Charter of the City of Dallas shall be one of the conditions of, and a part of, the consideration of this Contract, to-wit:

### **“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED**

(a) No officer or employee shall have any financial interest, direct or indirect, in any Contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office, or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Design/Builder or the City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by city employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”

## **ARTICLE 25 GIFT TO PUBLIC SERVANT**

(A) Owner may terminate this Contract immediately if Design/Builder has offered, conferred, or agreed to confer any benefit upon a City of Dallas employee or official that the City of Dallas employee or official is prohibited by law from accepting.

(B) For purposes of this section, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

(C) Notwithstanding any other legal remedies, Owner may require Design/Builder to remove any employee of Design/Builder from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Design/Builder as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

**ARTICLE 26  
NONDISCRIMINATION**

(A) General: As a condition of this Contract, Design/Builder covenants that Design/Builder will take all necessary actions to insure that, in connection with any work under this Contract, Design/Builder, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Design/Builder shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Design/Builder shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

**ARTICLE 27  
DISPUTES**

(A) Disputes: In the event of any dispute under this Contract, the parties agree to work in good faith to resolve such disputes; provided, however, in the event a dispute remains unresolved after both parties engage in the resolution process, Owner's determination in regard to any dispute shall be final.

(B) Notice of Contract Claim: **This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Design/Builder shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.**

**ARTICLE 28  
MISCELLANEOUS PROVISIONS**

(A) Governing Law; Venue: This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state. This Contract is performed in Dallas County, Texas, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Dallas County, Texas.

(B) Successors And Assigns: This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

(C) Non-Assignment: Design/Builder shall not assign this Contract, or any part of this Contract, without the prior written consent of Owner.

(D) Notices: Except as otherwise provided in Paragraph 27(B), any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be

effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for Owner, to:

\_\_\_\_\_  
Department of \_\_\_\_\_  
City of Dallas

\_\_\_\_\_  
Dallas, Texas 752\_\_

If intended for Design/Builder, to:

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

(E) Publicity: No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Design/Builder, either before or after completion of the Project, for publication, advertising or any commercial purposes without Owner's prior written consent.

(F) Severability: In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

(G) Counterparts: This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

(H) Captions: The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

(I) Entire Agreement; No Oral Modifications: This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

EXECUTED as of the \_\_\_ day of \_\_\_\_\_, 20\_\_, by Owner, signing by and through its City Design/Builder, duly authorized to execute same by Resolution No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, and by Design/Builder, acting through its duly authorized officials.

APPROVED AS TO FORM:  
THOMAS P. PERKINS, JR.  
City Attorney

CITY OF DALLAS  
MARY K. SUHM  
City Manager

BY \_\_\_\_\_  
Assistant City Attorney

BY \_\_\_\_\_  
Assistant City Manager

ATTEST:

DESIGN/BUILDER:

BY \_\_\_\_\_  
Corporate Secretary

BY \_\_\_\_\_  
President