

## TARRANT COUNTY SUPPLEMENTARY CONDITIONS FOR CONTRACTOR

The following Supplementary Conditions modify the General Conditions (A201 -- 2007) of the Contract for Construction. These Supplementary Conditions replace any General Conditions (A201 – 2007) to the extent the two documents contradict each other. The Standard Agreement between the Contractor and the Owner controls the Supplementary Conditions to the extent these two documents contradict each other. So the order of precedence for interpretation is: (1) The Standard Agreement between the Contractor and the Owner; (2) The Supplementary Conditions; and (3) The General Conditions (A201 – 2007).

**Delete existing 1.1.3 and replace with the following:**

### **1.1.3**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations and labor, materials, equipment and services provided or to be provided by trade contractors, subcontractors, sub-subcontractors, material suppliers, or any other entity for whom the Contractor is responsible under or pursuant to the Contract. The Work may constitute the whole or a part of the Project.

**Delete existing 1.1.8 and Replace with the following:**

### **1.1.8 DEFINITIONS**

**1.1.8.1** "Provide" and its derivatives will mean to properly coordinate, fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, and render operational or usable under the terms of the Specifications.

**1.1.8.2** "Knowledge," "recognize," and "discover," their respective derivatives and similar terms used in the Contract Documents, as used in reference to the Contractor, will be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers in exercising the care, skill and diligence required of a Contractor (but not a design professional) by the Contract Documents.

**Add the following as 1.2.4**

## **1.2.4 Intent of Drawings**

**1.2.4.1** Drawings are in part diagrammatic, and do not necessarily show complete details of construction, materials, or installation, and do not necessarily show how construction details or other items of work or fixtures or equipment may affect any particular installation. The drawings will be ascertained by the Contractor and correlated to bring the parts together to a complete whole.

**1.2.4.2** All dimensions will be verified by field measurements and all work laid out to permit pipes, valves, ductwork, lights, panels, other items of construction, to be located as closely as possible to locations shown. All items will be checked before installation to determine that they can be concealed properly, and that they clear any structural components, supports for other items, and cabinets and equipment or other mechanical, electrical or architectural items having fixed locations.

**1.2.4.3** Work will be laid out to assure ready accessibility to valves, fittings, and other items requiring servicing, adjustment or checking.

**1.2.4.5** If Work is required in a manner which makes it impossible to produce the Work in accordance with the Contract Documents, or should errors, omissions, or discrepancies be discovered in the Contract Documents, the Contractor will request in writing an interpretation before proceeding with Work. If Contractor fails to make such a written request after discovering same, no excuse or claim will be entertained for failure to carry out Work in a satisfactory manner. Should conflict occur in or between Drawings and Specifications, Contractor is deemed to have estimated and included in the Contract Sum the more expensive way of doing the Work, unless he will have asked for and obtained a written decision before execution of the Agreement.

**Delete all of 1.5 and replace with the following:**

## **1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**1.5.1** The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier will own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants will be deemed the authors of them. All copies of Instruments of Service, except the Contractor's record set, will be returned or suitably accounted for to the Architect, on request, upon

completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization will bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the copyrights or other reserved rights.

**Add the following as 1.7:**

## **1.7 EXECUTION OF CONTRACT DOCUMENTS**

**1.7.1** The drawing log list of Contract Documents will be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect will identify such unsigned Documents upon request.

**1.7.2** The Contractor acknowledges and declares that it has visited and examined the site and reasonably examined the physical and other conditions affecting the work including, without limitation, survey and engineering reports and studies delivered to or obtained by Contractor. In connection therewith, Contractor specifically will represent to Owner that to its best knowledge and belief it has, by careful examination, satisfied itself as to: (1) the nature, location, and character of the Project and the site, excluding subsurface and latent conditions; (2) the nature, location, and character of the general area in which the Project is located; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents. In arriving at the Contract Sum and the Contract Time, Contractor has, as an experienced and prudent manager and contractor, exercised its reasonable judgment and expertise to include the impact of such circumstances upon the Contract Sum and the Contract Time.

**1.7.2.1** Claims for additional compensation or time because of the failure of the Contractor to familiarize itself with visible surface conditions, excluding subsurface and latent conditions, at the site will not be allowed.

**1.7.2.2** The Contractor will evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, and (4) availability and cost of materials, tools and equipment. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project Site other than unforeseen concealed or latent conditions. The Contractor will be solely responsible for providing a safe place for the performance of the Work. The Owner will not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor to comply with the requirements of Subparagraph 1.7.2 and its subparts.

**Delete 2.1.1 and 2.1.2 and replace with the following:**

**2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner will designate in writing a representative who will have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. However, the owner's representative has no authority to approve a change to the cost of the project or a change to the time of the project. The Architect does not have authority to approve a change to the cost of the project or change to the time of a project. The term "Owner" means the Owner or the Owner's authorized representative.

**2.1.2.** The Owner will furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information will include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

**Delete 2.2.1, 2.2.2, 2.2.3, 2.2.4 and 2.2.5 and replace with the following:**

## **2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**2.2.1** Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner will secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Owner will pay for all permit fees, inspection fees and Certificates of Occupancy fees. . The Owner will pay for all utility assessment fees.

**2.2.3** The Owner will furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor will be entitled to rely on the accuracy of information

furnished by the Owner but will exercise proper precautions relating to the safe performance of the Work. Contractor will confirm the location of each utility, will excavate and dispose of each on-site utility and will cap each off-site utility as required by the Work and as may be included in the Specifications, At the Owner's request, the Contractor will make available the results of any site investigation, test borings, analyses, studies or other tests conducted by or in possession of the Contractor or any of its agents. The Contractor represents that it is generally familiar with the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof, including without limitation, all observable structural and surface conditions. The Contractor will exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements and easements.

**2.2.4** Upon receipt of a written request from the Contractor, information or services required of the Owner by the Contract Documents will be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control will be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

**2.2.5** Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all required copies of Drawings and Project Manuals.

**Delete 2.3 and replace with the following:**

### **2.3 OWNER'S RIGHT TO STOP THE WORK**

**2.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work will not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3, **Delete 3.2.2 and replace with the following:**

**3.2.2** Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor will carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, will take field measurements of any existing conditions, excluding concealed or latent conditions, related to that portion of the Work and will observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of

discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor will be reported promptly to the Architect and Owner as a request for information in such form as the Architect and Owner may require.

**Delete 3.2.3 and replace with the following:**

**3.2.3** Any design errors or omissions noted by the Contractor during this review will be reported promptly to the Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor will be reported promptly to the Architect and Owner.

**Delete 3.2.4 and replace with the following:**

**3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.3 and 3.2.2, the Contractor will make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor will pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor will not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and failed to report it to the Architect.

**Add 3.2.5:**

**3.2.5** The Contractor will notify the Architect of materials, systems, procedures or methods of construction, either shown on the drawings or specified, that it believes are incorrect, inadequate, obsolete, unsuitable for the purpose intended, or which could have an adverse effect upon installation or completion by others under separate contracts. The Architect will make a determination of these matters in writing to the Contractor who will forward the determination to the Owner for the Owner's final approval.

**Replace 3.3.1 with the following:**

**3.3.1** The Contractor will supervise and direct the Work, using the Contractor's best skill and attention. The Contractor will be solely responsible for and have control over construction means, methods, techniques, sequences and

procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor will evaluate the jobsite safety thereof and, except as stated below, will be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor will give timely written notice to the Owner and Architect and will not proceed with that portion of the Work without further written instructions from the Architect and approval by the Owner. If the Contractor is then instructed by Owner to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner will be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

**Add 3.3.4, 3.3.5, 3.3.6, 3.3.7, 3.3.8 and 3.3.9 as follows:**

**3.3.4** All employees and subcontractors of the Contractor will be qualified by training and experience to perform their assigned tasks. At the request of Owner, the Contractor will not use in the performance of the Work any employee or subcontractor deemed by Owner to be incompetent, careless, unqualified to perform the Work assigned to him, or otherwise unsatisfactory to Owner. Contractor will engage sufficient workers on the Project at all times to perform the Work in the time periods required by the Contract.

**3.3.5** The Contractor agrees that in the performance of the Work called for by this Agreement, it will employ only such labor, and engage Subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure or other improvement which the Contractor or any other contractor may then be erecting or altering on behalf of Owner. In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Contractor or any of its Subcontractor, Owner may, at its option and without demand, terminate this Agreement unless the Contractor will remedy the strike or work stoppage or other disruption within seven (7) calendar days after the dispute arises.

**3.3.6** Contractor will furnish Owner, on request, resumes of Contractor's key personnel involved in the day-to-day Work on the project.

**3.3.7** Contractor will not permit at any time alcohol, controlled substances or firearms to be present at the Project Site.

**3.3.8** Contractor will be responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. He will verify the figures shown on the drawings before laying out the Work and will be held responsible for activities resulting from his failure to do so.

**3.3.9** The Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. The Contractor will coordinate its Work with that of all others on the Project including deliveries, storage, installations and construction utilities. The Contractor will be responsible for the space requirements, locations, and routing of all materials and equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor will meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

**Add 3.4.4 as follows:**

**3.4.4** Should the Contractor elect to perform work after regular working hours, the additional cost of such work will be borne by the Contractor, as part of the Contract Sum.

**3.4.5** Products are generally specified by ASTM, other reference standard, manufacturer's name and model number or trade name. When specified by reference standard, the Contractor may select any product meeting this standard, by any manufacturer, if approved by the Architect. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any listed product and manufacturer combination. When one product and manufacturer is specified, the Contractor may not substitute for that product.

**3.4.5.1** After Contract execution, the Owner may consider product substitution, if the formal request meets the following:

(a) If the product is no longer available, the Contractor must submit its written request within 15 days of the Contract execution. For a request after that deadline, the request must include a certified statement from the manufacturer that the product is no longer available;

(b) The written request includes data identifying the product and substantiating its compliance with the Contract Documents. Where applicable, the request should include performance and test data, references, samples and an itemized comparison of the proposed substitution with the item specified; and

(c) The request includes cost data comparing the substitution with the specified product.

**3.4.5.2** By submitting a written request for substitution the Contractor represents:

(a) The proposed substitution is equal or superior to the specified item in all respects;

(b) The proposed substitution does not change the Contractor warranty for the construction;

(c) The cost of the proposed substitution is completely disclosed;

(d) The Contractor waives all claims for additional costs related to the substitution which subsequently become apparent; and

(e) The Contractor will coordinate the substitution's installation, making changes that the substitution may cause in order for the Work to be complete.

**3.4.5.3** Owner will not consider substitutions if:

(a) Made after the expiration of the specified time period;

(b) Indicated or implied on shop drawings submissions without the formal request described in 3.4.5.1; or

(c) Implementation of the substitution would substantially revise the Work or the Contract Documents.

**Delete 3.5 and replace with the following:**

### **3.5 WARRANTY**

**3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor will furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants to the Owner that the Work will be performed and completed in a good and workmanlike

manner, in accordance with the Contract Documents, all applicable building codes, good engineering and construction practices provided that the design meets all applicable building codes and good engineering practices. The Contractor will correct Work with errors, omissions, defects or deviations from the Contract Documents, without additional cost to Owner.

**3.5.2** All warranties will include labor and materials and will be signed by the manufacturer and/or Subcontractor as the case may be and countersigned by the Contractor. All warranties will be delivered to the Owner's Representative with copies to the Architect upon completion of the Work and before the submission of request for final payment. At the time of final completion of the Work, the Contractor agrees to assign to the Owner any and all manufacturers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties.

**3.5.3** The Contractor represents, warrants and covenants to the Owner that it is fully licensed, certified and authorized to enter into the Contract and that it and the Subcontractors are and will continue to be fully licensed, certified and authorized to perform the Work contemplated by the Contract Documents and any other work performed at the Project, and will provide evidence of the same to the Owner upon request.

**Delete 3.6 and add the following:**

### **3.6 TAXES**

**3.6.1** The Work qualifies for exemption from state and local sales tax. Contractor will provide exemption certificates as required by state law to suppliers. Owner will cooperate with Contractor regarding this exemption..

**3.6.2** All prices quoted by the Contractor or any subcontractor or supplier engaged by the Contractor or any subcontractor, are deemed to include all federal, state and local taxes, including without limitation, sales taxes, custom duties and excise taxes, effective at the date of purchase. Any such tax which is found to be inapplicable or for which exemption may be obtained is, to the extent of any refund or exemption available, the property of Owner. The purchase, lease, rental, storage, use or other consumption of tangible personal property for the performance of this Contract by the Contractor is exempt from state and local sales tax pursuant to section 151.311 of the Texas Tax Code. Contractor must use all reasonable efforts to claim the benefit of any exemption. Owner will receive the benefit of all reductions in the cost of construction attributable to the sales tax exemptions. This provision will control over any provision of the Contract Documents to the contrary.

**Delete 3.7.2 and replace with the following:**

**3.7.2** The Contractor will comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. In addition to and not in derogation of Contractor's duties under Subparagraphs 1.2.1 hereof, Contractor will have the obligation to carefully study and compare the Contract Documents with one another and with its own information and the information furnished by the Owner pursuant to Subparagraph 2.2.3 and promptly report to Architect and Owner any errors, inconsistencies, or omissions discovered or any variance from applicable laws, codes or regulations of which Contractor is or reasonably should be aware other than the responsibilities of the Architect or Engineer.

**Delete 3.10.1 and replace with the following:**

**3.10.1** The Contractor, promptly after being awarded the Contract, will prepare and submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule will not exceed time limits current under the Contract Documents, will be revised at appropriate intervals as required by the conditions of the Work and Project, will be related to the entire Project to the extent required by the Contract Documents, and will provide for expeditious and practicable execution of the Work.

**Delete 3.11 and replace with the following:**

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor will maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These will be available to the Architect and will be delivered to the Architect for submittal to the Owner upon completion of the Work, signed by the Contractor, certifying that they show complete and "as-built" conditions.

**Delete 3.12.7 and replace with the following:**

**3.12.7** The Contractor will submit to Owner one copy of all submissions made to the Architect pursuant to this Paragraph 3.12. The Owner will review each submission with promptness and provide any comments to the Architect prior to the Architect submitting back to the Contractor.

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

**3.12.8** add to the end of the paragraph “, except for error and omissions which are within the Architect’s design responsibilities.”

**Delete 3.12.10 and replace with the following:**

**3.12.10** The Contractor will not be required to provide professional services which constitute the practice of Architecture and Engineering.

**Add a new 3.12.11 which follows:**

**3.12.11** The Contractor will assemble for the Architect’s review two complete copies in loose leaf binders of operating and maintenance data from the manufacturers whose equipment is or will be installed in the Work. The Contractor will also prepare a checklist or schedule showing the type of lubricant to be used at each point of application and the intervals between lubrication for each item of equipment.

**Delete 3.15.1 and replace with the following:**

**3.15.1** The Contractor will keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor will remove from and about the Project waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials. The Contractor will maintain streets and sidewalks around the Project site in a clean condition. The Contractor will remove all spillage and tracking arising from the performance of the Work from such areas, and will establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.

**Delete 3.15.2 and replace with the following:**

**3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof will be charged to the Contractor by deductive Change Order.

**Delete 3.17 and replace with the following:**

### **3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

**3.17.1** The Contractor will pay all royalties and license fees. The Contractor will defend suits or claims for infringement of copyrights, intellectual property rights and patent rights and will hold the Owner and Architect harmless from loss on account thereof, but will not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright

violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. In the latter event, the Owner will indemnify and hold the Contractor harmless on account of any such loss or damage. However, if either party knows that the required design, process or product is an infringement of a copyright, intellectual property rights or a patent, then that party will be responsible for such loss unless such information is promptly furnished to the other.

**Delete 3.18.1 and replace with the following:**

### **3.18 INDEMNIFICATION**

**3.18.1** TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ARCHITECT, ARCHITECT'S CONSULTANTS AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST SUITS, CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, except damage to the Work itself, INCLUDING LOSS OF USE RESULTING THEREFROM AND IS CAUSED IN WHOLE OR IN PART BY NEGLIGENT ACTS OR OMISSIONS OR ACTS OR OMISSIONS RESULTING IN THE LIABILITY OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE OF A PARTY INDEMNIFIED HEREUNDER. THIS INDEMNITY WILL INCLUDE, BUT NOT BE LIMITED TO, ANY CLAIMS OR SUIT BROUGHT BY AN EMPLOYEE OR CONTRACTOR OR ANY OF CONTRACTOR'S SUBCONTRACTORS. THIS INDEMNITY OBLIGATION WILL NOT BE CONSTRUED TO NEGATE, ABRIDGE OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SUBPARAGRAPH 3.18.

**Add 3.18.3 as follows:**

**3.18.3** The provisions of Paragraph 3.18 will survive the termination of this Contract, howsoever caused, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of final completion nor acceptance of occupancy in whole or in part of the Work will waive or release any of the provisions of Paragraph 3.18.

**3.18.4** The Owner will cause any other contractor who may have a contract with the Owner to perform construction or installation Work in the areas where Work will be performed under the Owner/Contractor Agreement, to agree to indemnify the Owner and Contractor and hold them harmless from all claims for bodily injury and property damage that may arise from that contractor's operations. Such provisions will be in a form satisfactory to the Contractor

**3.18.5** The obligations of the Contractor under this Paragraph 3.18 will not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

**Delete 4.2.1 and replace with the following:**

**4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2, provided, however, Owner reserves the right to appoint one or more Representatives empowered to act for Owner during the Construction Phase and to supersede the Architect's Construction Phase responsibility to the extent set forth in the written notice to the Architect and Contractor. Architect will no longer bear responsibility with respect to those superseded responsibilities, unless the Owner directs the Architect in a written notice to resume those superseded responsibilities. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**Delete 4.2.2. and replace with the following:**

**4.2.2** The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations

- (A) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed;
- (B) to endeavor to guard the Owner against defects and deficiencies in the Work; and,
- (C) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.

However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Architect will promptly inform Contractor and Owner of any non-compliance observed. The Architect will exercise care and diligence when on site in discovering and properly reporting to the Owner any defects and deficiencies in the Work of the Contractor or any of its Subcontractors, or their agents or employees, or any other person performing any of the work in the construction of the Project. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

**Delete 4.2.4, 4.2.5, 4.2.6, 4.2.7, 4.2.8 and replace with the following:**

**4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

The Owner and the Contractor may communicate directly with each other, with copies of such communications delivered to the Architect. Communications by and with the Architect's consultants will be through the Architect. Communications by and with Subcontractors and material suppliers will be through the Contractor. Communications by and with separate contractors will be through the Owner.

**4.2.5** Based on the Architect's evaluations of the Work progress and quality of the Work and the Contractor's Applications for Payment, the Architect will make written recommendations as to the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**4.2.6** The Architect and Owner will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority will give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**4.2.7** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect will carefully study and compare Shop Drawings and other information furnished by the Contractor with the Contract Documents and will at once report to the Contractor errors, inconsistencies or omissions discovered. The

Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals will not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review will not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item will not indicate approval of an assembly of which the item is a component. The Architect's action will be taken in accordance with the Contractor's approved construction schedule, so as to cause no delay in the Work or in the Owner's obligations.

**4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. Any change affecting the Contract Sum or schedule must be approved by the Owner in writing prior to commencement.

**Delete 4.2.11 and replace with the following:**

**4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor which will be copied to the other.

The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect will be furnished in compliance with this Paragraph 4.2, then delay will not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

**Delete 4.2.12 and replace with the following:**

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

**Delete 4.2.13 and replace with the following:**

**4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents, subject to the prior approval of the Owner and industry acceptable tolerances and standards.

**Delete 4.2.14 and replace with the following:**

**4.2.14** The Architect's review of Shop Drawings, Product Data and Samples and on-site observation of the construction Work is to determine if the Contractor's submittals and Work appear to be in general conformance with the design concept set forth in the Contract Documents prepared by the Architect. It is understood that the Architect's review will not be considered to be complete in every detail or exhaustive and will also not relieve any Contractor, Subcontractor, manufacturer, supplier, fabricator, consultant or other third party from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents or for the responsibility to coordinate the Work, or portion of the Work, of one trade with another.

**Delete 5.1.1 and replace with the following:**

**5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site or to otherwise furnish labor or materials. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. If the Standard Agreement between the parties utilizes the Construction Manager At Risk construction delivery method, then a Subcontractor is also a Trade Contractor.

**Delete 5.1.2 and replace with the following:**

**5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site or otherwise furnish labor or materials. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

**Delete 5.2.1 and replace with the following:**

**5.2.1** Selection of subcontractors will be made in accordance with the terms of Chapter 271.118 of the Texas Local Government Code.

**Delete 5.2.3**

**Delete all of 5.3 and replace with the following:**

### **5.3 SUBCONTRACTUAL RELATIONS**

**5.3.1** By appropriate written agreement, the Contractor will require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement will preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and will allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor will require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor will make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**5.3.2** The Contractor will not enter into any subcontract, contract, agreement, purchase order or other arrangement ("Arrangement") for the furnishing of any portion of the materials, services, equipment or Work with any party or entity if such party or entity is an Affiliated Entity (as defined below), unless such Arrangement has been approved by the Owner, after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related or affiliated with the Contractor or with respect to which the Contractor has direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the Contractor; any holder of more than 10% of the issued and outstanding shares of, or the holder of any interest in the Contractor; any entity in which any director, officer, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the Contractor or any entity owner by the Contractor has a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, agent or shareholder.

**5.3.3** Each such subcontract will:

(a) Require that such Work be performed in accordance with the requirements of the Contract Documents;

(b) Require the Subcontractor to carry and maintain liability insurance in accordance with the Contract Documents;

(c) Require the Subcontractor to furnish such reasonable certificates and waivers as the Owner may request;

(d) Require that any Subcontractor and any Sub-subcontractor waives any rights it may have against the Owner for damage cause by fire or other perils covered by property or risk insurance maintained by the Subcontractor (or Sub-subcontractor) in connection with the Project;

(e) Provide that all warranties provided to Contractor, including material warranties, are fully assignable to the Owner;

(f) Omitted by Agreement

(g) Require the Subcontractor to provide a certificate in writing that it provided workers compensation insurance coverage for each employee.

**Delete 6.2.5 and replace with the following:**

**6.2.5** The Owner and each separate contractor will have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14. If such separate contractor initiates legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner will notify the Contractor, who will defend such proceedings at its own expense, and if any judgment or award against the Owner arises therefrom, the Contractor will pay or satisfy it and will reimburse the Owner for all attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Contractor.

**Delete 7.1.2 and replace with the following:**

**7.1.2** A Change Order will be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone (provided that it does not affect the Contract Time or Contract Sum).

**Add the following:**

**7.1.4** When a cost or credit for a proposed change is requested from the Contractor, it will submit an itemized breakdown showing quantities and unit cost or credit on each item which is contained in the proposed change including profit and overhead.

**7.1.5** A field directive or field order does not have an impact on the Contract Sum or the Contract Time, unless the Contractor submits a change order within 15 working days after the date of the directive or order.

**7.1.6** When submitting its change proposal, the Contractor will include and set forth in clear and precise detail, breakdowns of labor and materials for all trades involved and the estimated impact on the Progress Schedule. The Contractor will furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets, if requested by Owner, from any subcontractor.

**Add the following:**

**7.2.2** Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

**7.2.3** It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the Drawings and Specifications contained in the Contract Documents. No adjustment in the Contract Sum or the Scheduled Completion Date will be made unless such refinement or detailing results in changes in the scope, quality, function or intent of the Drawings and Specifications. The delivery of supplemental or revised drawings to the Contractor by either the Architect or the Owner's Representative will not be interpreted by the Contractor as fulfilling their requirements of the Article for a written order to proceed with the Work. The written order (signed by the Owner) must be in addition to such drawings.

**Delete 7.3.9 and add the following:**

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

**Delete 7.3.10 and add the following:**

**7.3.10** When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement will be effective immediately and will be recorded by preparation and execution of an appropriate Change Order. When either the Owner or the Contractor or both do not agree with the determination made by the Architect concerning the

adjustments in the Contract Sum and Contract Time, such disagreement will be resolved in the manner proscribed by Paragraph 15.3.

**7.3.11** The execution by Owner and Contractor of a Change Order will include all adjustments to the Contract Sum or Contract Time applicable to the Work covered or impacted by such Change Order, and no additional claims based on the Work performed in such Change Order or its impact on other Work will be valid.

**7.3.12** All proposals for a change involving an increase or decrease in the amount of the Contract Sum will be submitted by the Contractor in a completely itemized breakdown form which will include but not be limited to the following:

- a. Material quantities and input prices (separated into trades).
- b. Labor costs and their respective burdens.
- c. Construction equipment.

On proposals involving an increase to the amount of the Contract, overhead and profit will be allowed on the increase. On proposals involving both increases and decreases in the amount of the Contract, overhead and profit will be allowed on the net increase. On proposals involving a decrease in the amount of the Contract, overhead and profit will be included in the decrease.

Unless otherwise specified in the Agreement, the percentages for overhead and profit to be allowed to the Contractor and subcontractors on increases will not exceed the following:

**Combined Percentage Allowed (Overhead and Profit)**

To Contractor for Work performed by the Contractor's own forces – 10% overhead and 10% profit.

To Contractor for Work performed by other than his own forces – 10% overhead and 5% profit.

To Subcontractor for Work performed by his own forces – 10% overhead and 10% profit

To Subcontractor for Work performed by other than his own forces – 10% overhead and 5% profit

Allowable percentages will include all costs for preparing change order (office personnel including field layout and supervision if required by the change). For changed orders, the Contractor has the option of using one of the following methods of calculating the General Conditions associated with a particular change order:

- a. Itemize as a separate element general conditions costs required by a particular change order; or

b. Add 10% of the cost of the work included in a particular change order when the cost of the work is \$10,000 or less.

**Delete 8.3 and add the following:**

### **8.3 DELAYS AND EXTENSIONS OF TIME**

**8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by fire, weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation ("Delay"), then the Contract Time will be extended by Change Order for such reasonable time as the Architect and Owner may determine. Any such extension of Contract Time will be net of any delays caused by or due to the fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor (including the financial condition of the Contractor or any of its Subcontractors).

**8.3.2** Claims relating to time will be made in accordance with applicable provisions of Paragraph 15.3 or they will be deemed waived.

**8.3.3** Except as provided in this subparagraph, the Contractor will not be entitled to any other compensation or recovery of any damages of any kind due to a Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Contractor may receive an adjustment in the Contract Sum if any delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than 30 days(the "Grace Period"). Any adjustment in the Contract Sum is limited to the increase of direct costs incurred by the Contractor in performing the Work as a result of that portion of any Delay or Delays which cause the Contract Time to be increased beyond the Grace Period. Direct costs include general conditions items and direct on-site supervision.

**Add the following:**

**9.1.2** Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided, however, that any such holdback will be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Contractor.

**Delete 9.3.1.1 and add the following:**

**9.3.1.1** As provided in Subparagraph 7.3.9, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect if approved by Owner, but not yet included in Change Orders.

**Delete 9.4.1 and add the following:**

**9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect recommends as properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1. Failure of the Architect to comply with this time frame will not relieve the Owner of their obligation to pay the Contractor within the time required in paragraph 8.1 of the Contract Agreement.

**Delete 9.5 and add the following:**

**9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

- (.1) defective Work not remedied;
- (.2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

- (.3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- (.4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (.5) damage to the Owner or another contractor;
- (.6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- (.7) failure to carry out the Work in accordance with the Contract Documents; or
- (.8) failure to provide any submittals or documentation required under the Contract Documents in a timely manner, including a schedule of values and a construction schedule.

**9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner will not be deemed to be in breach of the Contract documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to or withholds in good faith in reliance on any provision of the Contract Documents, and no interest will accrue in connection with the withheld payment(s).

**Delete 9.6.4 and add the following:**

**9.6.4** Neither the Owner nor Architect will have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

**Modify 9.7 as follows:**

Change the word “binding dispute resolution” to “mediation” in the paragraph.

**Delete 9.8.1 and add the following:**

**9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will be considered suitable for Substantial Completion review when all required governmental inspections and certifications have been made and posted, all final finishes within the Contract Documents are in place as required by the Specifications, and there will have been a completion of and acceptance by Owner of all critical punch-list items so that the Owner could occupy or otherwise utilize the project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner’s (or those claiming by, through or under the Owner) normal business operations. As a further condition of Substantial Completion acceptance, the Contractor will certify

that all remaining Work will be completed within, thirty (60) consecutive calendar days following the date of Substantial Completion.

**Delete 9.10.3 and add the following:**

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

**Delete 9.10.5 and add the following:**

**9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier will constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Final payment is considered to have taken place when Contractor or any of its representatives negotiates Owner's final payment check, whether labeled final or not, for cash or deposits the check in any financial institution.

**Delete 10.1 and add the following:**

**10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**10.1.1** The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor will be responsible for providing such security on the Work site as necessary to protect against loss or damage to materials or the Work.

**Delete 10.2.5 and add the following:**

**10.2.5** The Contractor will promptly remedy damage and loss (provided that Contractor may fulfill this obligation through prompt action taken by the Contractor's insurance company under property insurance covering said loss) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or

indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

**Add the following:**

**10.2.9** The performance of the foregoing services by the Contractor will not relieve the Subcontractors of their responsibilities for the safety of persons and property and for compliance with all Federal, State and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work

**Delete 10.3.3 and add the following**

**10.3.3** To the fullest extent permitted by law, the Owner will indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

**Delete 10.3.6 and add the following:**

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

**Modify 11.1.1 as follows:** delete the words "set forth below" from the first sentence

**Delete 11.2 and add the following:**

**11.2.1** Owner will cause other than the Architect any contractor, construction manager, subcontractor, or others working on any of their behalf who are not hired by Contractor or its subcontractors, but who provide work or services (or who work in or around the such project site) for the Project, to: (a) name

Contractor, its directors, officers, employees, affiliates (collectively “Additional Insureds”) as additional insureds on a primary, non-contributory basis on all liability policies applicable to any such work or services that they perform, except for any workers compensation and professional liability policies. The additional insured coverage provided to the Additional Insureds on any commercial general liability policy will include coverage for any actual or alleged bodily injury, property damage or personal and advertising injury liability whether arising out of premises-operations or products-completed operations. The additional insured coverage required in this paragraph will apply before commencement of any work or services are performed and after the final completion of such project until the later of the statute of limitations or statute of repose for the types of claims covered by the policy to which the additional insured coverage applies and (b) waive any right of recovery, where permitted by law, against the Additional Insureds for damages to the extent covered by any insurance policy applicable to any such work or services, including but not limited to any general liability, business automobile, excess liability, builder’s risk and installation floater policies. Where a policy does not provide an automatic waiver, then the waiver shall be evidenced by a waiver of subrogation endorsement issued in the Additional Insureds’ names.

**Delete 11.1.2, 11.1.3, 11.1.4, and add the following:**

**11.1.2** The insurance required by Section 11.1.1 will be written for not less than limits of liability specified in paragraph 9.2.3 of the Agreement or required by law, as applicable. Coverages, whether written on an occurrence or claims-made basis, will be maintained without interruption from the date of commencement of the Work until the date of final payment and thereafter as required in this Contract.

**11.1.3** Contractor will file certificates of insurance with the Owner prior to commencement of the Work and thereafter upon Owner’s request at renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 will contain a provision that coverage afforded under the policies will not be canceled until at least 30 days’ prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, will be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon Owner’s request after renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2.

**11.1.4** The Contractor will cause the commercial liability coverage required by the Contract Documents to include the Owner as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner as an additional insured for

claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**Add the following:**

**11.1.5** In the event the Owner elects to provide insurance coverage for the Contractor and/or its Subcontractors and Sub-subcontractors via a wrap-up insurance program or otherwise, and the Owner's insurance program does not afford the same coverage as stated hereinabove, the Contractor may purchase a difference in conditions policy the premium of which shall be reimbursed to the Contractor as a Cost of Work of the Project.

**Delete 11.3 and its subparagraphs and replace with the following:**

**11.3 PROPERTY INSURANCE**

**11.3.1** The Contractor will purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis . Such property insurance will be maintained until Substantial Completion, as defined in the Contract Documents. This insurance will include the Contractor as the named insured and the interests of the Owner, Subcontractors and Sub-subcontractors in the Project.

**11.3.1.1** Property insurance will be on an "all-risk" or equivalent policy form and will include insurance against the perils of fire and physical loss or damage including vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and will cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. These coverages may include a sublimit of insurance.

**11.3.1.2** Intentionally left blank.

**11.3.1.3** If the property insurance requires deductibles, the Contractor will be responsible as a cost of the work for the first \$10,000 of costs not covered because of such deductibles, and Owner will be responsible for any cost of deductibles greater than \$10,000, not to exceed \$25,000.

**11.3.1.4** This property insurance will cover portions of the Work stored off the site, and also portions of the Work in transit. These coverages may include a sublimit of insurance.

**11.3.1.5** Partial occupancy or use in accordance with Section 9.9 will not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor will take reasonable steps to obtain consent of the insurance company or companies and will, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### **11.3.2 BOILER AND MACHINERY INSURANCE**

The Contractor will purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which will specifically cover such insured objects during installation and until Substantial Completion; this insurance shall include the Contractor as the named insured and the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work.

### **11.3.3 LOSS OF USE INSURANCE**

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**11.3.4** Intentionally left blank.

**11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**11.3.6** Upon Owner's request, the Contractor will file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy will contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy will contain a provision that the policy will not be canceled until at least 30 days' prior written notice has been given to the Owner.

### **11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, will require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies will provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation will be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**11.3.8** A loss insured under the Contractor's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear.

**11.3.9** Intentionally left blank.

**11.3.10** The Owner as fiduciary will have power to adjust and settle a loss with insurers.

**Delete 11.4.1 and replace with the following:**

**11.4.1** The Owner requires the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents.

**Delete 12.1 and replace with the following:**

## **12.1 UNCOVERING OF WORK**

**12.1.1** If a portion of the Work is covered without written concurrence of Owner or Architect, contrary to the Architect's or Owner's written request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect or Owner, be uncovered for the Architect's or Owner's examination and be replaced without change in the Contract Time and within the Contract Sum at no additional expense to the Owner.

**12.1.2** If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to it being covered, the Architect or Owner

may request to see such Work and it will be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement will, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, the cost of correction will be within the Contract Sum unless the condition was caused by the Owner or a separate contractor in which event the Owner will be responsible for payment of such costs.

**Delete 12.2.1 and replace with the following:**

**12.2.1** The Contractor will promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, and repair or replacement of any work which may be displaced or damaged by Contractor's correction will be at the Contractor's expense.

**Delete 12.2.2 and replace with the following:**

**12.2.2 AFTER SUBSTANTIAL COMPLETION**

**12.2.2.1** In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after the date of Substantial Completion of the entire Work or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor will correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner will give such notice promptly after discovery of the condition. If the Owner fails to so notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.4. Owner's making of a claim for repair or replacement of any item of Work will toll the running of the Warranty Period with respect to the item that is the subject of that claim and the warranty set forth in this Paragraph 12.2.2 will remain in effect as to that item until Contractor repairs or replaces the defective item of work even though the warranty period would otherwise have expired.

**12.2.2.2** The one-year period for correction of Work will be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

**12.2.3** The Contractor will remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**12.2.4** The Contractor will correct destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is defective or otherwise not in accordance with the requirements of the Contract Documents.

**12.2.5** Nothing contained in this Paragraph 12.2 will be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. The corrective remedies set forth in this Paragraph 12.2 are not exclusive and will not deprive the Owner of any action, right or remedy otherwise available to it for breach of any of the provisions of the Contract Documents.

**Delete 12.3 and replace with the following:**

### **12.3 ACCEPTANCE OF NONCONFORMING WORK**

**12.3.1** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, and the Contractor agrees, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as agreed to by the Owner and Contractor. Such adjustment will be effected whether or not final payment has been made. Contractor will pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such defective Work as well as the amount by which the value of the Work is diminished by the defect. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating Owner for the costs described above and the diminished value of the defective Work. If acceptance occurs after final payment, Contractor will pay to Owner the appropriate amount.

**Delete 13.1 and replace with the following:**

### **13.1 GOVERNING LAW**

**13.1.1** The Contract will be governed by the law of Texas and venue for causes of action concerning the Contract will be in the district courts of Tarrant County.

**Delete 13.3 and replace with the following:**

**13.3** All notices to be given hereunder will be in writing, and all payments to be made hereunder will be by check, and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested, or by delivering the same via fax/telecopy, overnight delivery service, or in person to such party. Notice deposited in the mail will be deemed delivered from and after the fourth day following the date deposited in the mail. Notice given in any other manner will be effective only if and received by the party to be notified. All notices to be given to the parties of will be sent or made at the addresses heretofore set forth. By giving the other party at least fifteen (15) days written notice thereof, the parties hereto will have the right to change their respective addresses and specify as its address for the purposes hereof any other address in the United States of America.

**Delete 13.5.1 and replace with the following:**

**13.5.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction will be made at an appropriate time. Unless otherwise provided, the Contractor will make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, the cost of which will be reimbursable to the Contractor as a Cost of the Work. If requested by Owner, Contractor will coordinate with testing laboratory to provide adequate time and notice for the testing laboratory to perform testing in accordance with the requirements of the Work. No inspection performed or failed to be performed by Owner hereunder will be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof. The Contractor will give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner will bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

**Add the following:**

**13.5.7** If a proposed substitution requires investigation, testing or approval to determine its suitability for incorporation into the Work, the testing of the proposed substitution will be as determined by the Architect. The cost of such investigations or tests will be reimbursable to the Contractor as a Cost of the Work.

**13.5.8** If Work installed is found not in compliance with the Contract Documents, investigation, testing and subsequent re-testing of the Work arising out of such deficiencies and defects will be performed by the Contractor. The type and nature of the inspections and tests will be as reasonably determined by the Architect. The cost of such investigations, testing and re-testing as well as any corrective work required will be responsibility of the Contractor and no additional expense to the Owner.

**Delete 13.6 and replace with the following:**

**13.6.1** Except as provided in the Contract Documents, undisputed payments due and unpaid under the Contract Documents due to a default by Owner in its obligations under the Contract will bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located and applicable to Owner.

**Add the following:**

### **13.8 SIGNAGE**

**13.8.1** All construction signage including, but not limited to, that appearing on tower cranes and other construction equipment located at the Project site, will be subject to the prior written approval of Owner. The Contractor recognizes that all signage may be disallowed, in Owner's sole discretion and that existing signage or advertising on construction equipment, field offices, trailers, construction fences, etc., may be required to be masked or deleted, all or not cost or expense to Owner.

**13.8.2.** The Contractor will treat all information relating to the Project and all information supplied to the Contractor by Owner or Architect as confidential and proprietary information of Owner and will not permit its release to other parties or make any public announcement or publicity releases without Owner's written authorization unless required to do so by applicable law, other than information that is public knowledge. The Contractor will also require Subcontractors and vendors to comply with this requirement.

### **13.9 CONTRACTOR'S RECORDS**

**13.9.1** The Contractor will keep and maintain such full and detailed accounts as may be necessary for proper financial management under this Agreement and the Contractor's system will be satisfactory to Owner. Owner will be afforded access to all of the Contractor's records, books, correspondence, instructions, drawings, calculations, contracts, subcontracts, purchase orders, receipts, memoranda, daily journals, computer discs and tapes and similar data relating to

this Agreement with the right to audit same, other than Contractor's proprietary systems. The Contractor will preserve all such records for a period of not less than three (3) years after the final payment is made hereunder or any longer period required by Owner. Owner's audit rights in this Paragraph will be applicable only to verification of prevailing wages on all subcontractors employed by the Contractor and the Contractor will be responsible for insuring that subcontractors maintain such records, allow such access and will include a provision to this in each subcontract with its subcontractors for the verification of prevailing wages.

**Delete 14.1.1 and add the following:**

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

- (.1) issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- (.2) an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- (.3) because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time required by the Contract Documents, subject to any right of Owner to withhold funds or suspend payment under the Contract; or,

**Delete 14.1.3 and add the following:**

**14.1.3** If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead earned and profit earned

**Delete 14.2.1 and replace with the following:**

**14.2.1** The Owner may terminate the Contract or terminate Contractor's rights to perform under the Contract if the Contractor:

- (.1) refuses or fails to supply sufficient skilled workers or suitable materials or equipment to complete the Work in a diligent, efficient, workmanlike or timely manner;

- (.2) fails to make prompt payment to Subcontractors for materials, equipment or labor in accordance with the respective agreements between the Contractor and the Subcontractors. Other than disputes between the Contractor and Subcontractor;
- (.3) disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or,
- (.4) disregards the instructions of the Architect or the Owner (when such instructions are based on the requirements of the Contract Documents);
- (.5) fails to perform the Work in accordance with the Contract Documents or makes fraudulent statements;
- (.6) makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they become due, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any receiver or any trustee for the Contractor or any substantial part of its property, commences any action relating to the Contractor under any reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the Contractor any such action or the Contractor by any act indicates its consent to or approval of any trustee for the Contractor or any substantial part of its property or suffers any receivership or trustee to continue undischarged; or
- (.7) otherwise does not fully comply with the Contract Documents.

**Delete 14.2.2 and replace with the following:**

**14.2.2** When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety seven (7) days' written notice, terminate employment of the Contractor and may:

- (.1) take possession of the site and the Project and of all materials, equipment, tools, and construction equipment and machinery thereon owned, rented and leased and utilized solely for the Work or the Project (with consent of lessor) by the Contractor; and/or
- (.2) accept assignment of subcontracts pursuant to Paragraph 5.4; and/or,
- (.3) finish the Work by whatever reasonable method the Owner may deem expedient including demand on the surety. Upon request of the Contractor, the Owner will furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work, unless the Work was performed by the surety.

**Delete 14.2.4 and replace with the following:**

**14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess will be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor will pay the difference to the Owner. The obligation to pay the amount to the Contractor or Owner will survive termination of the Contract.

**Add 14.2.5 and 14.2.6.**

**14.2.5** It is recognized that (i) if any order for relief is entered on behalf of or against the Contractor pursuant to Title 11 of the United States Code, (ii) if any other similar order is entered under any other debtor relief laws, (iii) if the Contractor makes a general assignment for the benefit of its creditors, or (iv) if a receiver is appointed for the benefit of creditors, or (v) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate the Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, the Owner, in addition to other rights and remedies hereunder, will be entitled to request of the Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request will entitle the Owner to terminate the Contract Documents or Contractor's right to perform thereunder and to the accompanying rights set forth above in Subparagraphs 14.2.1 through 14.2.4 hereof. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Owner will be entitled to make demand on the surety or proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum. To the extent the costs of completing the Work, including compensation for additional professional services and expenses, exceed those costs which would have been payable to the Contractor to complete the Work except for the Contractor's default, the Contractor will pay the difference to the Owner, subject to any rights of the surety, if the surety perform Contractor's obligations, and this be determined by the Owner and confirmed by the Architect.

**14.2.6** Owner may, if Contractor neglects to prosecute the Work properly or to perform any provision of the Contract Documents, or otherwise does, or omits to do, anything whereby safety or proper construction may be endangered or whereby damage or injury may result to person or property, after three (3) days written notice to Contractor, without prejudice to any other remedy Owner may have, make all work, material, omissions or deficiencies, and may deduct the cost therefore from the amount included in the Contract Sum due or which may thereafter become due Contractor, but no action taken by Owner hereunder will affect any of the other rights or remedies of Owner granted by this Agreement or

by law or relieve Contractor from any consequences or liabilities arising from such acts or omissions.

**Delete all of Article 15 and replace with the following:**

### **15.3 CLAIMS AND DISPUTES**

#### **15.3.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims will rest with the party making the Claim.

#### **15.3.2 TIME LIMITS ON CLAIMS**

Contractor must notify Owner and Architect in writing (a) within twenty-one (21) days after the occurrence of the event giving rise to a Claim or (b) within twenty-one (21) days after the Contractor first recognized the condition giving rise to a Claim, whichever is later. Within twenty (20) days of submitting a Claim, Contractor must provide complete and detailed documentation concerning the nature and amount of the Claim, to the extent such information is reasonably available. Failure to comply with the requirements of this Subparagraph 15.3.2 constitutes a waiver of Contractor's Claim.

#### **15.3.3 CONTINUING CONTRACT PERFORMANCE**

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

#### **15.3.4 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS**

If conditions are encountered at the site which are:

- (A) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents; or,
- (B) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party will be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions.

The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect will so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within twenty-one (21) days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time will be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment will be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 15.4.

#### **15.3.5 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein will be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.4.

**15.3.6** The following reasons may give rise to a Contractor filing a Claim in accordance with Paragraph 15.3, if the reasons result in additional cost to the Contractor:

- (A) A written interpretation from the Architect;
- (B) An order by the Owner to stop the Work where the Contractor was not at fault;
- (C) A written order for a minor change in the Work issued by the Architect;
- (D) Failure of payment by the Owner;
- (E) Termination of the Contract by the Owner;
- (F) Suspension of the Contract by Owner; or
- (G) Other reasonable grounds,

#### **15.3.7 CLAIMS FOR ADDITIONAL TIME**

**15.3.7.1** If the Contractor wishes to make Claim for an increase in the Contract Time, Contractor must provide written notice of the Claim to the Owner.. The Contractor's Claim will include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**15.3.7.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim will be documented by data substantiating that weather conditions were abnormal for the period of time, and had an adverse effect on

the scheduled construction. Data substantiating normal weather conditions or actual weather conditions will be furnished by the National Weather Service or the National Oceanic & Atmospheric Administration (N.O.A.A.) only. Contractor will submit to Owner written request for delays due to adverse weather conditions within 10 days of the end of the month in which the delays occurred. Substantiating data from the National Weather Service or N.O.A.A. will be furnished by the Contractor upon request by the Owner at its earliest availability. Inclement weather that occurs between commencement of construction and substantial completion will constitute delay only to the extent that days lost during a particular month due to such inclement weather exceeds the average lost time (in work days) for the months indicated in paragraph 6.2.3 of the contract agreement.

**15.3.7.3** Non-availability or shortages of labor, local strikes and lockouts will not constitute a claim for increase in the Contract Time or Contract Sum.

### **15.3.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, will be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice will provide sufficient detail to enable the other party to investigate the matter.

**15.3.9** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices will be equitably adjusted.

### **15.3.10 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- (A) damages incurred by the Owner for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and,
- (B) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained

in this Subparagraph 15.3.10 will be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

## **15.4 RESOLUTION OF CLAIMS AND DISPUTES**

**15.4.1** Claims will be referred initially to the Architect for review and recommendation which the Architect will render in writing within 30 days after receipt from the Contractor or the claim will be deemed rejected by the Architect.

**15.4.2** The Architect will approve or reject Claims by written decision, which will state the reasons therefore and which will notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect will be final and binding on the parties unless either party pursues mediation as described in Paragraph 15..5.

**15.4.3** In evaluating Claims, the Architect may, but will not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense. Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**15.4.8** If a Claim relates to or is the subject of a mechanic's lien, or is a claim on a bond the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, or by mediation.

## **15.5 MEDIATION**

**15.5.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 15..3.10, 9.10.4 and 9.10.5 will, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to further proceedings, if any, other than injunctive relief.

**15.5.2** The parties will endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, will be in accordance with Subchapter C of Chapter 154, Texas Civil Practice and Remedies Code. Request for mediation will be filed in writing with the other party to the Contract. Mediation will proceed in advance of further proceedings other than injunctive relief, which will be stayed pending mediation for a period of 60 days from the

date of filing, unless stayed for a longer period by agreement of the parties or court order.

**15.5.3** The parties will share the mediator's fee and any filing fees equally. The mediation will be held in the Fort Worth, Tarrant County, Texas. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof.

## **16 EQUAL OPPORTUNITY**

**16.1** The Contractor and its Subcontractors will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, religion, color, sex, or national origin. Contractor will post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

**16.2** The Contractor and all Subcontractors will, in all solicitations or advertisements for employees by them, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.