



## **City of Waco, Texas**

### **Request for Proposal**

**RFP No. 2022-084**

**Cameron Park Zoo:**

**Education Center & Vet Hospital**

**Issue Date: October 18, 2022**

**Closing Date & Time: November 18, 2022 at 2:00 p.m.**

**Opening Date & Time: November 18, 2022, at 2:01 p.m.**

RFP Opening Location: Purchasing Services Office, 1415 N. 4<sup>th</sup> Street, Waco, Texas  
(via Zoom Video Conferencing) See Page 2

For Information Contact: Kasey Gamblin, Purchasing Manager, 254-750-8405

Pre-submittal Site Visit: Cameron Park Zoo, Entry Plaza, Gate 8  
1701 North 4<sup>th</sup> St, Waco, Texas, 76707  
On November 1, 2022 from 10:00 A.M. to 11:00 A.M

**Attendance is not mandatory; however, the pre-submittal site visit is the only scheduled opportunity to examine the existing site. All questions must be submitted as directed within the request for proposals.**

Purchasing Services  
Post Office Box 2570  
Waco, Texas 76702-2570  
Telephone 254 / 750-8060  
Fax 254 / 750-8063  
[www.waco-texas.com](http://www.waco-texas.com)

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# **City of Waco, Texas**

**RFP No. 2022-084**

## **Cameron Park Zoo: Education Center & Vet Hospital**

### **REGISTER INTEREST**

You have received a copy of the above described Request document. If you would like to register your interest in this project so that you will receive any future notices or addenda concerning the project, please fill in the information requested below and fax this page to 254-750-8063. You may also scan this page and email to: [kaseyg@wacotx.gov](mailto:kaseyg@wacotx.gov).

Company/Firm: \_\_\_\_\_

Name of Contact Person(s): \_\_\_\_\_

Email(s): \_\_\_\_\_

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

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

It is your responsibility to complete and return this form to the City. Failure to do so will result in your not receiving notices and addenda related to this project from the City of Waco.

Notices and addenda are posted on the City's website and can be accessed at: <http://www.waco-texas.com/purchasing-rules.asp>.

City of Waco Purchasing Services  
Post Office Box 2570  
Waco, Texas 76702-2570  
Telephone 254 / 750-8060  
Fax 254 / 750-8063  
[www.waco-texas.com](http://www.waco-texas.com)

## I. Schedule for Solicitation Competitive Sealed Proposal

The proposed schedule of events is tentative and may be modified throughout the selection process at the discretion of the City of Waco.

Issuance of the RFP	October 18, 2022
Pre-submittal Site Visit	November 01, 2022 from 10:00 A.M to 11:00 A.M.

***Attendance is not mandatory; however, the pre-submittal site visit is the only scheduled opportunity to examine the existing site. All questions must be submitted as directed within the request for proposals.***

Deadline for questions in 5:00 p.m.	November 8, 2022
Proposals due by 2:00 p.m.	November 18, 2022
Proposal Opening at 2:01 p.m.	November 18, 2022
Evaluation of submission	Nov. 18 – Dec. 2, 2022
Interviews or presentations may be conducted.	

Tentatively, the final selection decision will be made and submitters will be notified of award by December 2, 2022. This schedule is subject to change by the City.

## II. Contact with City of Waco

The contact person for this solicitation process is: Kasey Gamblin, Purchasing Manager who can be reached at:

Email: kaseyg@wacotx.gov Telephone: (254) 750-8405 Fax: (254) 750-8063

Questions concerning the solicitation must be submitted to contact person **in writing** on or before date shown in the schedule above.

<b>Via U.S. Mail:</b> City of Waco Purchasing Services Attn: Kasey Gamblin, Purchasing Agent P.O. Box 2570 Waco, Texas 76702-2570	<b>Via Delivery Services/Personal Delivery :</b> City of Waco Purchasing Services Attn: Kasey Gamblin, Purchasing Agent 1415 North 4 <sup>th</sup> Street Waco, Texas 76707 <b>NOTE: US Mail does NOT deliver to street address</b>
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**Contact with someone other than the Purchasing Agent listed above or his/her designated representative at the City of Waco concerning this solicitation may be grounds for removal from consideration.**

Interpretation, modification, corrections, or changes to the solicitation documents will be made by addenda issued by the City of Waco. Addenda will be made available <http://www.waco-texas.com/bids.asp>. Interested vendors are encouraged to return the Register Interest form on the previous page.

A complete copy of this RFP, including contract forms, plans, specifications, any bond forms, and any other contract documents related to this project, are available at <http://www.waco-texas.com/bids.asp>.

### **III. Definitions**

The following definitions apply to this document and the transaction between the City and the selected submitter unless otherwise designated in the context. Terms, which are singular, may include multiple, where applicable and when in the best interests of the City:

- (1) “City” means and refers to the City of Waco, Texas.
- (2) “Company” or “Firm” means and refers to any submitter, whether such submitter be a sole proprietor, corporation, company, partnership, company, or any other entity legally defined or recognized under the laws of the State of Texas.
- (3) “Proposal” or “Submission” or “Submittal” refers to a response submitted to an RFP.
- (4) “Project Review Committee” means a committee established by the City to review and score the submitted Proposals. The Committee may be composed of City of Waco staff, City Councilmembers, or their designees, or other individuals selected to serve on the committee by the City.
- (5) “RFP” means and refers to this Request For Proposals.
- (6) “Selected submission” means and refers to the submission sent to the City of Waco by the Selected Firm.
- (7) “Selected Firm” means the firm who is selected by the City and to whom the City Council/City Manager awards a contract for the services or commodities requested in this solicitation.
- (8) “Solicitation” means an RFP issued by the City Waco seeking products or services described in the document.
- (9) “Submitter” or “Vendor” or “Proposer” or “Contractor” means a firm that submits a response to a solicitation.
- (10) “Contract documents” includes the RFP and all of the Appendices attached to the RFP.
- (11) “Day” means a calendar day unless otherwise specifically defined.

## IV. REQUESTED SERVICES

### A. Project Description

**The City of Waco is soliciting proposals for the construction of a new Education Center and Veterinary Hospital at the Cameron Park Zoo located at 1701 N. 4<sup>th</sup> Street, Waco. The Education Center includes multipurpose and flexible classroom space, ambassador animal care facilities, staff offices and building support spaces. The project's second building is a new Veterinary Hospital to replace the current facilities on the zoo property including a new surgery suite and treatment rooms, animal holding rooms, necropsy space, clinical pathology lab, staff offices and building support spaces.**

- (1) Detailed drawings, scope of services, and/or specifications are attached as Appendices.
- (2) A digital version of this document can be obtained from the City of Waco website at <http://www.waco-texas.com/bids.asp>.

### B. Terms, Conditions, and Requirements

In addition to the specifications for the Project, the attached Appendices include the City's Contract Requirements.

### C. Duration of Service:

It is anticipated by the City of Waco that this project will be complete and available for occupancy and use by Summer 2024. It is additionally anticipated that work will not be performed on Saturdays, Sundays, or City holidays unless specifically approved by City. Since "day" is defined as a calendar day, Saturdays, Sundays, and City holidays shall be counted as days and included in calculating the Contract time. If a Contractor wants to perform work on Saturdays, Sundays, or City holidays, the Contractor shall seek approval by making a written request to City. Contractor shall be responsible for all City staff and third-party time, costs, expenses and overtime for work performed on Saturdays, Sundays, or City holidays, unless excused in writing by the City prior to the work. Contractor shall include sufficient weather days as appropriate for the time of year and overall duration of the work within its proposal.

- C. **Reservations by City:** The City of Waco reserves the right to reject any and all submittals. This issuance of this solicitation does not obligate the City to contract for expressed or implied services. The City of Waco will not reimburse proposers for any costs incurred during the preparation or submittal of responses to this solicitation.

- (1) Furthermore, the City expressly reserves the right to:
  - (a) Waive any defect, irregularity, or informality in any submittal or procedure;
  - (b) Extend the solicitation closing time and date;
  - (c) Reissue this solicitation in a different form or context;
  - (d) Procure any item by other allowable means;

- (e) Waive minor deviations from specifications, conditions, terms, or provisions of the solicitation, if it is determined that waiver of the minor deviations improves or enhances the City's business interests under the solicitation; and/or
- (f) Extend any contract when most advantageous to the City, as set forth in this solicitation.
- (g) Retain all proposals submitted and to use any ideas in a proposal regardless of whether or not that proposal is selected.

## V. REQUEST FOR PROPOSALS – SUBMISSION AND AWARD PROCEDURES

### A. Requirements

- (1) Proposals should be kept to the minimum necessary length to explain the proposer's attributes and pricing. Typed responses are preferred in Times New Roman, Arial or Calibri font. Responses must be clear and may be subject to disqualification if illegible.
- (2) **Proposals** should include one (1) original of the qualifications and proposal on 8 ½ by 11 paper and one (1) electronic file in PDF format on a flash drive, jump drive, CD, or DVD containing the following information:
  - (a) Cover sheet containing RFP number, project name, and proposer's name, address, and telephone number
  - (b) A brief company history.
  - (c) Completed and signed copies of Forms included in Appendix C.
  - (d) A short narrative of the proposer's approach to the project and a statement of understanding targeting the specific nature of this project.
  - (e) Information on the proposer's current work load and ability to complete the project.
  - (f) Certificate showing current insurance coverage.
  - (g) Pricing/Cost Information – Pricing Forms
    - 1. All pricing and cost information is to be submitted less *Federal Excise* and State of Texas Sales Taxes. A tax exemption certificate will be executed upon request. The City's federal tax identification number is 1-74-6002468-4.
    - 2. Security – Bid Bond.
      - a. Each submission must be accompanied by a **certified check** of the submitter, or a **bid bond** executed by the submitter as principal and having as surety thereon a surety company approved by the City in the amount of 5% of the submission. The Surety's Power of Attorney must accompany the bid bond. The bid bond and surety's Power of Attorney must

both carry the same date which is no earlier than three (3) days prior to the scheduled bid opening date.

- b. Checks will be returned to all except the three lowest bidders within three days after the opening of bids. The remaining checks will be returned promptly after the City and the selected bidder have executed the contract.
- c. If no award has been made within ninety (90) days after the date of the opening of bids, a bidder may demand that the security submitted be returned so long as said bidder has not been notified of the acceptance of his bid.
- d. If the selected bidder refuses or fails to execute and deliver the contract and bonds (payment and/or performance) required within 10 days after receiving notice of the acceptance of his bid, the bid security shall forfeit to the City as liquidated damages for such failure or refusal.
- e. A Bid Bond form can be found in the Appendices.
- (h) Names of the Subcontractors for the major components of the Project
- (i) List of Proposer's and Subcontractors' experience on projects completed in McLennan County (include value of project and the owner's phone and email contact information)
- (j) List of Proposer's and Subcontractors' experience on projects for the City of Waco or other municipalities (include value of project and contact information (phone and email) at the municipality)
- (k) List a minimum of five (5) projects that are of similar size and type performed by the Proposer and each Subcontractor (include the value of each project and owner's phone and email contact information)
- (l) List of five (5) references for the Proposer and three (3) references for each Subcontractor.
- (m) Resume, project history, and other information on Proposer's job superintendent for the project.

**B. Completeness of Submission**

- (1) Proposers are responsible for examining and being familiar with all specifications, drawings, standard provisions, instructions, and terms and conditions of the solicitation and their responses.
- (2) The proposer must attach all required forms with each submission copy. Forms must be signed by a representative of the proposer authorized to bind the proposer contractually. The proposer must include a statement identifying any exceptions to this RFP or declare that there are no exceptions taken to the RFP.

**C. Response Date and Location**

**Responses to this solicitation must be received at the office of Purchasing**



**Department as stated in the Schedule for Solicitation Competitive Sealed Proposal.**

Interested parties may submit their proposals **Via Delivery Services or Personal Delivery** to:

City of Waco Purchasing Services  
Attn: Kasey Gamblin, Purchasing Manager  
1415 North 4<sup>th</sup> Street  
Waco, Texas 76707

Interested parties may also submit their proposals through **U.S. Mail** delivered to:

City of Waco Purchasing Services  
Attn: Kasey Gamblin, Purchasing Manager  
P.O. Box 2570  
Waco, Texas 76702-2570

If using U.S. Mail, note that U.S. Mail is initially received at Waco City Hall and then delivered to the office of Purchasing Services by a City courier. That delivery may occur a day or more after being received at Waco City Hall. Allow additional time in advance of the proposal due date for U.S. Mail delivery. If the Purchasing Office has not received the proposal by the stated deadline, the proposal will be returned unopened.

All submissions shall be sent to the attention of the Purchasing Agent in a sealed envelope that is clearly marked on the outside as follows:

**“RFP 2022-084 Cameron Park Zoo Education Center & Vet Hospital”**

**Proposals will be opened at 2:01 p.m. (Central Time) on:  
November 18, 2022.**

**Proposers accept all risk of late delivery submissions regardless of instance or fault.** A proposal received after the submission deadline will not be considered and will be returned unopened to the submitter.

The City will **NOT** accept a proposal submitted by facsimile transmission (fax) or by electronic mail (email).

All submissions and accompanying documentation will become the property of the City.

**D. Modification to or Withdrawal of Submission**

Submissions cannot be altered or amended after the submission deadline passes. Submissions may be modified prior to the deadline by providing a written notice to the Purchasing contact person at the address previously stated. To modify a submission prior to the submission deadline:

- (1) Submit a written notice of the modification **WITHOUT** revealing the pricing/cost or terms information. The modification should provide the addition, subtraction, or other modifications so that the final pricing/costs or terms will not be revealed to the City until the sealed proposal is opened.

- (2) The written modification may be submitted by electronic transmission (fax or email or personal delivery to Purchasing Agent identified earlier in this document. The written modification must be received by the City prior to the closing time.
- (3) If the modification is submitted through an electronic transmission (fax or email), the City must receive an original of the modification document signed by the proposer and submitted to a delivery company (UPS, FedEx, etc.) prior to the proposal closing time. If the original of the modification was not submitted to a delivery company prior to the closing time or is not received within three (3) days after the closing time of the proposal, consideration will not be given to the modifications provided in the electronic transmission.

A submission may also be withdrawn by providing the notice in person by a representative of the proposer who can provide proof of his authority to act for the proposer. The representative will be required to execute a receipt reflecting the submission is being withdrawn. If a submission is withdrawn before the submission deadline stated herein, the proposer may submit a new sealed proposal provided the new proposal is received prior to the closing date and time deadline stated on page 1. This provision does not change the common law right of a submitter to withdraw a submission due to a material mistake in the submission.

#### **E. Submission Validity Period**

A submission responding to this RFP signifies the vendor's agreement that the submission, and the content thereof, are **valid for ninety (90)** days following the submission deadline unless otherwise agreed to in writing by all parties. The submission may become part of the contract that is negotiated between the City and the successful proposer.

#### **F. Cost to Develop Submission**

Costs for developing and assembling submissions in response to this solicitation are entirely the responsibility and obligation of the proposer and shall not be reimbursed in any manner by the City.

#### **G. Evaluation Procedures**

The proposals will be initially reviewed and evaluated by a Project Review Committee. Each proposal should be as complete and accurate as possible. The City reserves the right to request additional information or clarifications, oral discussions, or presentations in support of the proposal.

#### **H. Vendor Presentation**

The evaluation by the Project Review Committee will be presented to the City Manager or Executive staff, who will determine whether proposers may be invited to make a formal presentation of their proposal and/or sit for a panel interview. There is no obligation for the City to host interviews in order to make the final selection

#### **I. Evaluation Criteria**

The following criteria will be used to evaluate the submittals (scoring points available):

<b>RFP Scoring Criteria</b>	<b>Scoring Points Available</b>
The proposed pricing and/or identified fees;	70
The proposed duration;	10
Experience with projects of similar size and type (Contractor, Subcontractors):	10
Experience of proposed Superintendent	5
Proposer's reputation (Contractor and Subcontractors):	5
<b>TOTAL AVAILABLE POINTS</b>	<b>100</b>

**J. Final Selection**

Based on all information reviewed and presentations/interviews (if conducted), the City Manager or Executive staff shall establish the final ranking of the proposals.

- (1) During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from proposers.

**K. Contract Award and Execution**

The final contract must be awarded and approved by the Waco City Council if the amount of the contract will exceed \$50,000.00. If the contract is for less than that amount, depending on the amount, the contract may be executed by the City Manager, an Assistant City Manager, department head or director.

## **APPENDIX A**

### **Scope of Services / Pricing Forms**

- (1) Proposal Form
- (2) Sample Bid Bond Form

To: Honorable Mayor and City Council  
City of Waco, Texas

**PROPOSAL FORM**

Cameron Park Zoo:  
Education Center & Vet Hospital  
1701 N. 4<sup>th</sup> Street  
City of Waco, Texas

City of Waco RFP # 2022-084

From: \_\_\_\_\_ (Contractor Print Name Here)

I have received plans, details, and specifications for the project listed above as prepared by Perkins&Will. I have also received Addenda Nos. \_\_\_\_\_ and have included their provisions in my proposal. I have examined the documents, existing conditions and the site and submit the following proposal. In submitting the proposal, I agree:

1. To hold my proposal open for 90 days after Proposal receiving date.
2. To enter into and execute a contract, if awarded on the basis of this proposal.
3. To execute the contract, if awarded, within ten (10) calendar days after notification of award, and to commence work not later than ten (10) calendar days from date of "Notice to Proceed."
4. To accomplish the work in accord with the Contract Documents.
5. That I have reviewed the AIA A101-2017 and AIA A201-2017, as modified by the Owner and attached to the Request for Proposals.
6. **To complete the work in \_\_\_\_\_ calendar days.**

I will perform all work of this project for the lump sum price of:

**BASE PROPOSAL:** \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

I will include the following alternative items of work as specified for changes to the Base Proposal sum as follows:

**ALTERNATE #1: Classroom Skylights.** Omit skylights, infill with adjacent roofing system:

ADD | DEDUCT \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
(Circle One)

**ALTERNATE #2: Interior Shiplap Siding in Classrooms.** Omit shiplap siding, provide painted gypsum board with horizontal reveals:

ADD | DEDUCT \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
(Circle One)

To: Honorable Mayor and City Council  
City of Waco, Texas

**PROPOSAL FORM**

Cameron Park Zoo:  
Education Center & Vet Hospital  
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**ALTERNATE #3: Interior Shiplap Siding in Corridor / Lobby.** Omit shiplap siding, provide painted gypsum board with horizontal reveals:

ADD | DEDUCT \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
(Circle One)

**ALTERNATE #4: Acoustical Wall Panels in Classrooms.** Reduce square footage of acoustical wall panels in Classrooms by 50%:

ADD | DEDUCT \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
(Circle One)

**ALTERNATE #5: Sliding Door System in Classrooms.** Omit sliding door system panels and utilize OFOI curtains:

ADD | DEDUCT \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
(Circle One)

**ALTERNATE #6.a: Folding Panel Partitions in Classrooms.** Reduce height to 10-feet:

ADD | DEDUCT \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
(Circle One)

**ALTERNATE #6.b: Folding Panel Partitions in Classrooms.** Change to wall covering vinyl covering in lieu of fabric:

ADD | DEDUCT \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
(Circle One)

I will adjust the contract sum in accordance with the following Unit Prices:

ITEM	DESCRIPTION	UNIT	ADD	DEDUCT
1	Moisture Vapor Emission Control System	Square Foot		
2.a	Drilled Piers – 24 inch	Lineal Foot		
2.b	Drilled Piers – 30 inch	Lineal Foot		
2.c	Drilled Piers – 36 inch	Lineal Foot		
2.d	Drilled Piers – 42 inch	Lineal Foot		
3.a	Pier Casing – 24 inch, 20 feet	Per pier		
3.b	Pier Casing – 30 inch, 20 feet	Per pier		

To: Honorable Mayor and City Council  
City of Waco, Texas

**PROPOSAL FORM**

Cameron Park Zoo:  
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City of Waco, Texas

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3.c	Pier Casing – 36 inch, 20 feet	Per pier		
3.d	Pier Casing – 42 inch, 20 feet	Per pier		

I will add for any additional work above and beyond the scope of this contract for the cost of all jobsite labor and materials furnished plus \_\_\_\_\_ percent (\_\_\_\_%) for overhead and profit. Overhead and profit includes office personnel and expenses.

I will add for any additional work above and beyond the scope of this contract performed by a subcontractor for the cost of subcontractor plus \_\_\_\_\_ percent (\_\_\_\_%) for overhead and profit.

I will use the following subcontractors on this work:

	Subcontractor's Name	Location	MWBE Status?
Demolition	_____	_____	_____
Concrete	_____	_____	_____
Masonry	_____	_____	_____
Structural Steel	_____	_____	_____
Glue Laminated Construction	_____	_____	_____
Framing	_____	_____	_____
Exterior Envelope	_____	_____	_____
Millwork	_____	_____	_____
Div 12 – Lab Casework	_____	_____	_____
Roofing	_____	_____	_____
Doors & Hardware	_____	_____	_____
Animal Caging	_____	_____	_____
Storefront & Glazing	_____	_____	_____
Acoustical Ceilings	_____	_____	_____
Drywall	_____	_____	_____
Painting	_____	_____	_____
Floorcovering	_____	_____	_____
Plumbing	_____	_____	_____
HVAC	_____	_____	_____

To: Honorable Mayor and City Council  
City of Waco, Texas

**PROPOSAL FORM**

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Electrical	_____	_____	_____
Datacom/Telecommunications	_____	_____	_____
Earthwork	_____	_____	_____
Utilities	_____	_____	_____
Fire Sprinkler/Protection	_____	_____	_____
Fire Alarm	_____	_____	_____

I understand that changes to the above subcontractors are allowable only with Owner's permission. All subcontractors that are not direct employees of the general contractor must be listed in their respective categories. If trade is not applicable, write "NA" or "Not Applicable"; if self-performing, write "SP" or "Self Performed" in the space provided.

Executed on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Company Name

[If participant is a corporation]

Signature: \_\_\_\_\_

[complete the following]

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

Sole Owner, or Partner, or President of Corporation  
(Delete titles inapplicable to signer)

ATTEST:

Whose address is:

\_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_

\_\_\_\_\_

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

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

Email: \_\_\_\_\_



**BID BOND****THE STATE OF TEXAS           §****COUNTY OF \_\_\_\_\_§**

**KNOW ALL MEN BY THESE PRESENTS, THAT \_\_\_\_\_**  
 \_\_\_\_\_, (hereinafter called the Principal), as Principal,  
 and \_\_\_\_\_,  
 (hereinafter called the Surety), as Surety, are bound unto the **City of Waco**, Texas, a home  
 rule municipal corporation of McLennan County, Texas (hereinafter called Obligee) in  
 the amount \_\_\_\_\_DOLLARS  
 (\$\_\_\_\_\_), which is five percent (5%) of the bid, for the payment  
 whereof said Principal and Surety bind themselves, and their heirs, administrators,  
 executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid to enter into a certain written  
 Contract with Obligee for *{enter description of contract below}*  
 \_\_\_\_\_,  
 which is scheduled to be opened on \_\_\_\_\_, 20\_\_\_\_\_.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS  
 SUCH**, that if the said Principal shall faithfully, enter into such written Contract, then this  
 obligation shall be void; otherwise to remain in full force and effect.

**IT IS EXPRESSLY UNDERSTOOD AND AGREED** that if said Principal  
 should withdraw its Bid any time after such Bid is opened and before official rejection of  
 such Bid or, if successful in securing the award thereof, said Principal should fail to enter  
 into the Contract and furnish, if required, satisfactory Performance Bond and Payment  
 Bond, the Obligee, in either of such events, shall be entitled and is hereby given the right  
 to collect the full amount of this Bid Bond as liquidated damages.

The Surety, for value received, hereby stipulates and agrees that the obligation of  
 said Surety and its bond shall be in no way impaired or affected by any extension of the  
 time within which the Obligee may accept such Bid, and said Surety does hereby waive  
 notice of any such extension.

**Bid Bond – Page 2**

**PROVIDED**, further that if any legal action be filed upon this Bond, venue shall lie in McLennan County, Texas.

**IN WITNESS WHEREOF**, the said Principal and Surety do sign and seal this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ATTEST/WITNESS:

\_\_\_\_\_  
Secretary (if corporation) / Witness

\_\_\_\_\_  
*Name of Principal - Contractor*

(if corporation Corporate Seal)

BY: \_\_\_\_\_  
signature

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

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

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Surety Secretary

\_\_\_\_\_  
*Name of Surety*

(Surety Seal)

BY: \_\_\_\_\_  
Attorney-in-Fact signature

\_\_\_\_\_  
Witness to Surety

Address: \_\_\_\_\_  
For Attorney in Fact

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

\_\_\_\_\_

\_\_\_\_\_

NOTE: Submit an original bid bond and a certified copy of the power of attorney along with full contact information for the Surety. Both the bid bond and the power of attorney should be **dated for the same date which is no earlier than three (3) business days prior to the scheduled bid opening**. [Count back from the day of the bid opening and do not count the bid opening day. Example: bid opening on Thursday, count back Wednesday, Tuesday, and Monday.] If the opening is delayed or rescheduled, Principal and/or Surety may be asked to provide proof that the bid bond executed is still valid. (11/03/2016)

COMPLETED FORM MUST BE RETURNED WITH BID/PROPOSAL

# **APPENDIX B**

## **Contract Requirements**

- (1) City of Waco General Terms and Conditions
- (2) General Conditions for Construction Work
- (3) Insurance & Indemnification Requirements
- (4) Worker's Compensation
- (5) Wage Rates
- (6) Sales Tax Information
- (7) HB89 Energy Form
- (8) HB89 Gun Form
- (9) HB89 Israel Form
- (10) HB 1295 Information Sheet
- (11) Protest Procedure
- (12) AIA Document General Conditions A201-2017
- (13) AIA A101-2017 Standard Forms of Agreement
- (14) Sample Payment and Performance Bond Requirements

## APPENDIX B.(1)

### General Waco Terms and Conditions

- (a) **Applicable Law and Venue.** This solicitation and any resulting contract will be governed and construed according to the laws of the State of Texas. The terms and conditions of the contract awarded pursuant to the solicitation are fully performable in McLennan County, Texas and venue for any dispute regarding contract shall be in McLennan County, Texas.
- (b) **Arbitration / Mediation.** The City of Waco will not agree to binding or mandatory arbitration or mediation.
- (c) **Conflict of Interest.** Vendor agrees to comply with the conflict of interest provisions of the Waco City Charter, Waco Code of Ordinances, and/or state law. Vendor agrees to maintain current, updated disclosure of information on file with the Purchasing Services Division throughout the term of the contract.
- (d) **Gratuities.** The City may, by written notice to the Vendor, cancel this contract without liability to the City, if it is determined by the City that gratuities have been offered to any officer or employee of the City with a view toward securing a contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations in respect to the performance of such a contract. In the event this contract is canceled by City as set forth in this paragraph, the City shall be entitled to recover from Vendor all additional costs incurred by City as a result of the cancellation.
- (e) **Unfunded Liability.** City's obligation is payable only and solely from funds available for the purpose of this purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Vendor by City. The City will not incur a debt or obligation to pay selected bidder any amounts the City does not have the current funds available to pay, unless the contract includes a provision for the City to appropriate funding for the debt or obligation.
- (f) **Advance Payments.** The City will not make advance payments to a selected firm or any third party pursuant to this solicitation or resulting contract.
- (g) **Gift of Public Property.** The City will not agree to any terms or conditions that cause the City to lend its credit or grant public money or anything of value to the selected firm.
- (h) **Procurement Laws.** The City will not agree to any terms or conditions that cause the City to violate any federal, Texas, or local procurement laws, including its own charter.
- (i) **Limitation of Liability.** The City of Waco will not agree to an artificial limitation of liability (e.g. liability limited to contract price or liability capped at an amount actually paid in previous 3 months, etc.) or an artificial statute of limitations (e.g. any lawsuit must be commenced within one year of the event).
- (j) **Waiver.** No claim or right arising out of a breach of the contract resulting from this solicitation can be discharged in whole or in part by a waiver or renunciation of the

claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

- (k) **Right To Assurance.** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, that party may request that the other party give written assurance of his intent to perform. In the event that a request is made and no assurance is given within five (5) days, the requesting party may treat this failure as an anticipatory repudiation of the contract.
- (l) **Attorney's fees; Legal Costs.** The City will not agree to pay the selected firm's attorney's fees or other legal costs under any circumstances.
- (m) **Advertising.** Vendor shall not advertise or publish, without City's prior consent, the fact that City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
- (n) **Arrears In Taxes.** Article VII. Taxation, Section 8, of the City of Waco Home Rule Charter states: The City shall be entitled to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation who is in arrears to the City of Waco for taxes, in the amount of taxes so in arrears, and no assignment or transfer of such debt, claim, demand or account after the said taxes are due, shall affect the right of the City to offset the said taxes against the same.
- (o) **Tax Certification; Offset of Other Debts Against City.** Selected bidder hereby certifies that it is not delinquent in the payment of taxes owed to the City and will pay any taxes owed to the City so that such taxes will not become delinquent. If this certification is subsequently determined to be false, such false certification shall constitute grounds for termination of the contract awarded under this SOLICITATION, at the option of City. Furthermore, Selected bidder agrees the City is entitled to counterclaim and offset against any debt, claim, demand, or account owed by the City to the selected bidder, pursuant to the awarded contract, for any debt, claim, demand, or account owed to the City, including other than the taxes mentioned above. The City may withhold from payment under the awarded contract an amount equal to the total amount of debts, claims, accounts, or demands including taxes owed to the City by the selected bidder. The City may apply the amount withheld to the debts and taxes owed to the City by the selected bidder until said debts are paid in full. No assignment or transfer of such debt, claim, demand or account after the said taxes or debts are due shall affect the right of the City to offset the taxes and the debt against the same.
- (p) **Independent Contractor.** The selected bidder will be an independent contractor under the contract. Professional services provided by the selected bidder shall be by the employees or authorized subcontractors of the selected bidder and subject to supervision by the selected bidder, and not as officers, employees or agents of the City. Selected bidder will be required and agrees to comply with all state and federal employment laws as well as all other federal, state and local laws, rules and regulations affecting the performance of all obligations taken herein.

- (q) **No Joint Enterprise/Joint Venture.** It is not the intent of this solicitation or the contract to be awarded to create a joint enterprise or joint venture.
- (r) **Subcontracting Bid.** If subcontracting with another company or individual is proposed, that fact, along with providing the same information for the subcontractor that is required to be provided by the bidder under this solicitation, must be provided and clearly identified in the bid. Following the award of the contract, no additional subcontracting will be permitted without the express prior written consent of the City.
- (s) **Assignment-Delegation.** No right or interest in the contract shall be assigned or delegation of any obligation made by Vendor without the written permission of the City. Any attempted assignment or delegation by Vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
- (t) **Modifications:** This contract can be modified or rescinded only by a written instrument signed by both of the parties or their duly authorized agents.
- (u) **Interpretation-Parol Evidence:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete agreement for dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.
- (v) **Equal Employment Opportunity:** Vendor agrees that during the performance of its contract it will:
  1. Treat all applicants and employees without discrimination as to race, color, religion, sex, national origin, marital status, age, or handicap.
  2. Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or request. The Vendor shall be advised of any complaints filed with the City alleging that Vendor is not an Equal Opportunity Employer. The City reserves the right to consider its reports from its human relations administrator in response to such complaints in determining whether or not to terminate any portion of this contract for which purchase orders or authorities to deliver have not been included, however, the Vendor is specifically advised that no Equal Opportunity Employment complaint will be the basis for cancellation of this contract for which a purchase order has been issued or authority to deliver granted.
- (w) **Israel:** Vendor acknowledges that effective September 1, 2017, the City is required to comply with Section 2270.001 of the Texas Government Code, enacted by House Bill 89 (85<sup>th</sup> (R) Texas Legislature), which requires that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. By executing this Agreement, Vendor verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

## APPENDIX B.(2)

### General Conditions for Construction Work

The “City of Waco Standard Specifications for Construction” (2013 Edition), hereinafter referred to as City Standard Specifications, is incorporated herein by reference for all intents and purposes. The General Provisions of the City Standard Specifications include provisions related to the administration of the contract. If a provision of the City Standard Specifications conflicts with a provision in this solicitation, the provision in this solicitation controls. If the applicable provision is still unclear, the City Manager for the City of Waco, or his designee, will determine which provisions, specification or standard controls and his determination shall be final.

The City Standard Specifications may be obtained by accessing the City of Waco website at [www.waco-texas.com](http://www.waco-texas.com) and going to Bid Opportunities – Engineering Services. It may also be obtained by contacting the City of Waco Public Works Department at 254-750-5440.

- (a) **Permits and Fees:** All permitting fees from the City will be waived on construction projects. The contractor will still need to apply for all applicable permits. However, there will be no cost associated with issuance of City permits.
- (b) **Time of Completion and Liquidated Damages:** Completing the work described in this solicitation in a timely manner is very important to the City of Waco. Submitter must agree to commence work on or before a date to be specified in a written "Notice to Proceed" of the City and to fully complete the project within the time stated in the contract documents. As it is impracticable and extremely difficult to fix the actual damages, if any, that may proximately result from a failure by Submitter to perform the service, should Submitter fail to complete the project within the calendar days specified in the contract, Submitter agrees to pay to City, or have withheld from monies due it, the amount stated in the contract documents as liquidated damages for each calendar day of delay or nonperformance. Any sums due and payable hereunder by the Submitter shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract. Execution of a contract for this Project shall constitute agreement by the City and Submitter that said amount is the minimum value of the costs and actual damage caused by the failure of the Submitter to complete the Project within the allotted time. A sum due as liquidated damages may be deducted from payments due the Contractor if such delay occurs. Adjustments to the contract times can only be made as provided in the contract documents and any conditions or specifications referenced therein.

- (c) **Conditions of Work:** While the City is issuing a solicitation including specifications, each Submitter is still responsible for examining all of the issued documents, attending any pre-bid conference, making a site visit, and taking whatever steps are necessary to inform itself of the conditions relating to the project and the employment of labor thereon. Each Submitter must inform itself of the conditions relating to the project and the employment of labor thereon. Failure to do so will not relieve the Submitter awarded this contract of its obligation to furnish all material and labor necessary to carry out the provisions of the contract. Insofar as possible, the Selected Firm, in carrying out the Project, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.
- (d) **Employment Conditions/Requirements:** Submitters shall pay particular attention to the required employment conditions that must be observed and the minimum wage rates to be paid. If federal or state funds are involved in paying for the work, there may be additional requirements that must be followed to comply with the terms of the federal or state funding.
- (e) **Security for Faithful Performance [Payment and Performance Bonds]:** Simultaneously with his delivery of the executed contract, the Selected Firm shall furnish the required surety bonds as security for faithful performance of this contract (Performance Bond) and for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract (Payment Bond), as specified in the documents included herein. For public works contracts, state law requires a Performance Bond if the contract is for an amount in excess of \$100,000.00 and a Payment Bond if the contract is for an amount in excess of \$50,000.00. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the City. The surety who signs contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.
- (f) **Force Majeure:** In the event performance by the Selected Firm of its obligations under this Agreement shall be interrupted or delayed by or as a consequence of a fire, flood, severe weather, or other act of God, war, insurrection, civil disturbance, or act of state, the Selected Firm shall be excused from such performance for the period of time such occurrence shall have lasted or such period as is reasonably necessary to rebuild or take other action necessary to resume performance. The period of time reasonably necessary to rebuild or take other action necessary to resume performance shall be as determined by the agreement of the parties, which agreement shall be negotiated and arrived at in good faith. The Selected Firm shall notify the Contact Person or Contract Administrator of any matter covered above, the occurrence of which interferes or threatens to interfere with the performance of any of its obligations under the bid. Upon such notice, the Selected Firm and the City shall consult and cooperate as to measures which may be taken to overcome the interference or as to alternative measures which may be undertaken by the parties with a view to the continued performance of the bid agreement.



- (g) **Right to Assurance:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the questioning party may demand the other party give written assurance of its intent to perform. In the event that a demand is made, and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
- (h) **Invoice Submittal Procedures:** If invoices are submitted or otherwise used pursuant to the bid awarded under this solicitation, the Selected Firm shall present invoices to the City in the following form and content:
1. Each invoice must reference the City of Waco contract, agreement or Purchase Order number;
  2. Only one contract, agreement, or project shall be billed on a particular invoice;
  3. Only one invoice per every thirty (30) days per contract, agreement, or project may be submitted; and
  4. Each invoice must have a billing number, which reflects in sequence the number of invoices that have been submitted on the contract, agreement, or project.

The invoice requirements stated herein shall not be read to disallow or exclude other information that may be otherwise required or requested by the City. Such information required herein must be submitted only on an invoice and not in any other non-invoice form or document.

- (i) **Termination of Contract:** Except as provided elsewhere in the contract documents:
1. The City may terminate the contract for cause for Selected Firm's failure to perform work, non-adherence to established federal, state and/or local laws, or a violation of any of the contract provisions. Upon written termination, the City may exclude the Selected Firm from the Project site and pursue any remedies available to the City.
  2. Upon ten (10) days written notice, City may terminate the contract for convenience, for any reason. In such case, the Selected Firm shall be paid, without duplication, for completed and acceptable work and expenses, including reasonable overhead and profit, and for other reasonable expenses directly attributable to the termination. In no case shall the Selected Firm be paid for anticipated profits or other consequential damages. Upon receipt of written notice, the Selected Firm shall have a duty to mitigate its termination costs and shall not incur additional costs unrelated to the costs directly related to either securing completed work or winding down the Project.

**City of Waco Insurance & Indemnification Requirements**  
**Vertical Construction with Builder's Risk (03/22/2019)**

**Insurance Requirements:**

**A contractor's financial integrity is of interest to the City. Therefore, subject to a contractor's right to maintain reasonable deductibles, a contractor shall obtain and maintain in full force and effect for the duration of the contract, and any extension hereof, at contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized to do business in the State of Texas that are rated A- or better by A.M. Best Company and/or otherwise acceptable to the City in the following types and amounts:**

Type	Amount
Workers' Compensation	Statutory
Employer's Liability	\$1,000,000/\$1,000,000/\$1,000,000
Commercial General Liability Including: <ul style="list-style-type: none"> <li>Premises/Operations</li> <li>Independent Contractors</li> <li>Products Liability/Completed Operations</li> <li>Personal &amp; Advertising Injury</li> <li>Broad form property damage, to include fire legal liability</li> </ul>	\$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Business Automobile Liability <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired vehicles</li> </ul>	\$1,000,000 per occurrence or its equivalent on a combined single limit (CSL basis).
All Risk Builder's Risk <ul style="list-style-type: none"> <li>Including Flood and Earthquake</li> <li>City as named insured or additional insured</li> <li>Replacement Cost</li> </ul>	Amount of the contract or replacement value of the facility.

**Term of Policy:** With regard to any approved claims-made policy form, a contractor shall maintain and keep in force and effect said coverage during the term of this contract and for a period of seven (7) years following the expiration or completion of the contract with the City, either through an existing carrier or a carrier of comparable financial statute and reputation.

Unless otherwise agreed to in the contract documents, Builders Risk coverage can be terminated at the time that the City accepts the structure as substantially complete, unless the project is being completed in phases; then the coverage shall remain in effect until the City accepts the entire structure or structures as substantially complete.

**Modification of Insurance Requirement:** The City reserves the right to review these insurance requirements during the effective period of the contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk

Manager or designee, based upon changes in statutory law, court decisions, or circumstances surrounding this contract.

### **Proof of Insurance Required and When to Submit:**

Examination & Approval. All insurance policies shall be subject to the examination and approval of the City for their adequacy as to form and content, form of protection, and financial status of insurance company.

When to Submit. Prior to the execution of the contract by the City of Waco and before commencement of any work under this contract, a contractor shall furnish original proof of insurance to the City's Risk Manager which is clearly labeled with the contract name and City department. The proof will include completed/current Certificate(s) of Insurance, endorsements, exclusions, and/or relevant extracts from the insurance policy, or copies of policies. Thereafter, new certificates, policy endorsements, exclusions, and/or relevant extracts from insurance policies, or policies shall be provided prior to the expiration date of any prior certificate, endorsement, or policy. No officer or employee other than the City's Risk Manager or designee shall have authority to waive this requirement.

Additional Insured. Except for Workers' Compensation and Employers' Liability, the City, its elected officials, officers, servants, agents, volunteers and employees shall be named as additional insureds. No officer or employee, other than the City Risk Manager or designee, shall have authority to waive this requirement.

Other-Insurance Endorsement -- All insurance policies are to contain or be endorsed to state that an "Other Insurance" clause shall not apply to the City where the City is an additional insured shown on the policy.

Agent Information. The certificate(s) or other proof of insurance must be completed by the broker of record and must be signed and include the agent information including the agent name, title and phone number. The proof of insurance shall be sent directly from the insurance agent to the City's Risk Management Office by U.S. Postal Service to City of Waco, ATTN: Risk Manager, P.O. Box 2570, Waco, Texas 76702-2570 or by delivery service to 1415 North 4<sup>th</sup> Street, Waco, Texas 76707. To send by email, please contact the Risk Management Office at 254-750-5730 to obtain the email address.

Precondition to Performance & Basis for Termination. The City shall have no duty to pay or perform under the contract until such certificate(s), policy endorsements, exclusions, and/or relevant extracts from the insurance policy have been delivered to and approved by the City's Risk Manager. The contractor understands that it is the contractor's sole responsibility to provide this necessary information to the City and that failure to timely comply with these insurance requirements shall be a cause for termination of a contract. If the City determines that it will deny payment, not perform, or terminate the contract because of the failure to provide certain information or documents, the City shall give the contractor notice of that determination and allow contractor fifteen (15) days to correct the deficiency.

Waiver of Subrogation. All liability policies will provide a waiver of subrogation in favor of the City.

Notice of Cancellation, Non-renewal, Material Change. The Contractor shall provide written notification to the City of the cancellation, non-renewal, or material change of any insurance required herein. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation, non-renewal, or material change, or is first aware that

the cancellation, non-renewal, or material change is threatened or otherwise may occur, whichever comes first. Contractor shall provide the City with a replacement certificate(s) of insurance, policy endorsements, exclusions, and/or relevant extracts from the insurance policy either before the cancellation, non-renewal, or material change is effective, if it knew in advance of such, or within ten (10) business days of first learning of the cancellation, non-renewal, or change if it did not learn of that such action in advance.

### **INDEMNIFICATION.**

**A CONTRACTOR EXECUTING A CONTRACT WITH THE CITY AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE SERVICES RENDERED PURSUANT TO THE CONTRACT AND AGREES TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, AGENTS, AND SERVANTS, OF AND FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTIONS OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS AND ANY LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH, THE SERVICES TO BE RENDERED HEREUNDER, WHETHER OR NOT SAID CLAIMS, DEMANDS, CAUSES OF ACTIONS ARE CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND A PARTY TO THIS AGREEMENT, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND SOME OTHER THIRD PARTY.**

**Employee Litigation:** In any and all claims against any party indemnified hereunder by any employee (or the survivor or personal representative of such employee) of the contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work, or anyone for whose acts any of them may be liable, the indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for contractor or any such subcontractor, supplier, or other individual or entity under workers' compensation or other employee benefit acts.



### **City of Waco Workers' Compensation Coverage Verification Form**

The City of Waco, a State of Texas Governmental Entity and Municipality, is required to comply with the Texas Labor Code. Specifically, **Texas Labor Code – Section 406.096** directs Contractors who enter into a building or construction Contract with a Municipality to certify in writing that (1) they provide workers' compensation insurance coverage for each employee of the contractor employed on public projects, and (2) they receive a certificate from each subcontractor showing that every employee of the subcontractor is covered by workers' compensation insurance.

For your convenience, Texas Labor Code – Section 406.096 is attached.

Please review Section 406.096 prior to completing the City of Waco Workers' Compensation Coverage Verification Form.

If you have questions concerning this form, contact City of Waco Risk Management office at (254) 750-5730.

## LABOR CODE

## TITLE 5. WORKERS' COMPENSATION

## SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT

## CHAPTER 406. WORKERS' COMPENSATION INSURANCE COVERAGE

## EXTRACT:

Sec. 406.096. REQUIRED COVERAGE FOR CERTAIN BUILDING OR CONSTRUCTION CONTRACTORS. (a) A governmental entity that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project.

(b) Each subcontractor on the public project shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the governmental entity.

(c) A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

(e) In this section:

(1) "Building or construction" includes:

(A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

(B) remodeling, extending, repairing, or demolishing a structure; or

(C) otherwise improving real property or an appurtenance to real property through similar activities.

(2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

**Office Use Only**

Date Received:

**City of Waco Workers' Compensation Coverage Verification Form. For Building or Construction Contractors**

This form is being filed in accordance with Texas Labor Code – Section 406.96. Required Coverage For Certain Building Or Construction Contractors.

1. Name of Company doing business with the City of Waco.

\_\_\_\_\_.

2. Company Primary Point of Contact for Insurance issues.

Name: \_\_\_\_\_ Phone: \_\_\_\_\_.

Address: \_\_\_\_\_.

Email: \_\_\_\_\_  
(Optional)

3. Name of Insurance Company providing Workers' Compensation Coverage for Company Employees.

Name	Address	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Is this an update to previously provided information on workers' compensation insurance?

\_\_\_\_\_ YES \_\_\_\_\_ NO.

Note: Please inform the City of Waco of changes in Insurance Companies.

5. Has the Company hired one or more Subcontractors for this project?

\_\_\_\_\_ YES \_\_\_\_\_ NO

6. Has each Subcontractor provided the Company with a certificate showing workers' compensation insurance coverage for each of the Subcontractor's employees?

\_\_\_\_\_ YES      \_\_\_\_\_ NO

7. Name of each Subcontractor and Name of its Insurance Carrier providing Workers' Compensation Coverage for Subcontractor's Employees:

Subcontractor

Insurance Carrier

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please provide a copy of each Subcontractor's proof of Workers' Compensation Coverage.

8. **Printed Name and Title of person completing this form, and have Witness sign.**

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date Signed: \_\_\_\_\_

**WITNESS:**

Signature: \_\_\_\_\_ Date Signed: \_\_\_\_\_

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

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

**PLEASE SIGN AND RETURN WITH BID**





## PREVALING WAGE RATES INFORMATION

Texas Government Code Chapter 2258 requires a worker employed by a contractor or subcontractor in the execution of a contract for the public work by or on behalf of political subdivision of the state to be paid a prevailing wage rate.

Definition of “public work.” A public work to which this provision applies includes but is not limited to construction of a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. It does not apply to work done directly by a public utility company under an order of a public authority. Whether this Project is a public work shall be determined by the City, and such determination shall be provided in writing to the Contractor before the opening of bids.

Worker wage rate. Contractor agrees, covenants, and guarantees that it and its subcontractor(s) constructing this Project, if a public work, shall pay their workers, other than maintenance workers, employed on this Project:

1. not less than the general prevailing rate of per diem wages for work of a similar character performed within the geographical limits of the City; and
2. not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

"Worker employed on a public work" defined. A worker is employed on a public work for the purposes of this provision if the worker, including a laborer or mechanic, is employed by a contractor or subcontractor in the execution of a contract for a public work with the City, or any officer of the City, or the City Council of the City of Waco.

Determination of prevailing wage rate. The City Council of the City of Waco shall determine the general prevailing rate of per diem wages to be paid for each craft or type of worker needed to construct the Project by:

1. conducting a survey of the wages received by classes of workers employed on public works of a character similar to the contract work in the geographical limits of the City in which this public work is to be performed; or
2. using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.) if the survey used to determine that rate was conducted within a three-year period preceding the date the City Council of the City of Waco issues invitations for bids for this public work.

Sum certain of prevailing wage rate. The City Council shall determine the general prevailing rate of per diem wages as a sum certain, expressed in dollars and cents.

Wage rates incorporated in agreement and in invitation to bid. The prevailing wage rate to be paid for each craft or type of worker needed to construct the public work shall be specified in the invitation to bid for this Project and is incorporated by reference herein.

Determination final. The City Council's determination of the general prevailing rate of per diem wages is final.

Penalty. A contractor or subcontractor who violates this provision shall pay to the City sixty dollars (\$60) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the invitation to bid and this contract. The City Council shall use any money collected under this provision to offset the costs incurred in the administration of this provision. A contractor or subcontractor does not violate this provision if the City Council, in awarding the bid for this contract, does not determine the prevailing wage rates and specify the rates in the invitation to bid and in this contract.

Maintenance of wage record. Contractor agrees, covenants, and guarantees that it and its subcontractor(s) shall keep a record showing:

1. the name and occupation of each worker employed by the contractor(s) and subcontractor(s) in the construction of this public work; and
2. the actual per diem wages paid to each worker.

Inspection of wage record. The record shall be open at all reasonable hours to inspection by the officers and agents of the City.

Payment greater than prevailing rate not prohibited. This provision does not prohibit the payment to a worker employed on a public work an amount greater than the general prevailing rate of per diem wages.

Reliance on certificate of subcontractor. The contractor awarded this bid is entitled to rely on a certificate by a subcontractor regarding the payment of all sums due those working for the subcontractor until the contrary has been determined.

Duty of City to hear complaints and withhold payment. The City Council shall:

1. take cognizance of complaints of all violations of this provision committed in the execution of the construction of this public work; and
2. withhold money forfeited or required to be withheld under this provision from the payments to the contractor(s) under the bid contract, except that the City may not withhold money from other than the final payment without a determination by the City Council that there is good cause to believe that the contractor has violated this provision.

Complaint; initial determination. The City Council shall comply with Sections 2258.023 and 2258.056, Government Code, in the initial determination of a complaint presented pursuant to this provision.

For the purposes of this Project, the general prevailing rate of per diem wages are the wage the rates set forth on the following page(s).

"General Decision Number: TX20220260 08/05/2022

Superseded General Decision Number: TX20210260

State: Texas

Construction Type: Building

County: McLennan County in Texas.

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

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658.

Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
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If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.
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The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this

wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

#### Modification Number Publication Date

0	01/07/2022
1	02/25/2022
2	06/17/2022
3	08/05/2022

BOIL0074-003 01/01/2021

	Rates	Fringes
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BOILERMAKER.....	\$ 29.47	24.10
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ELEC0072-002 06/01/2022

	Rates	Fringes
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ELECTRICIAN.....	\$ 29.05	3%+8.83
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ENGI0178-005 06/01/2020

	Rates	Fringes
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#### POWER EQUIPMENT OPERATOR

(1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 32.35	13.10

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\* IRON0084-011 06/01/2022

	Rates	Fringes
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IRONWORKER, ORNAMENTAL.....	\$ 26.76	7.88
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PLUM0286-011 06/06/2022

	Rates	Fringes
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PIPEFITTER (Excludes HVAC Pipe Installation).....	\$ 33.15	15.37
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PLUM0529-002 10/04/2021

	Rates	Fringes
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Plumber.....	\$ 29.24	11.84
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\* SUTX2014-036 07/21/2014

	Rates	Fringes
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BRICKLAYER.....	\$ 18.00	0.00
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CARPENTER, Excludes Drywall Hanging, and Metal Stud Installation.....	\$ 14.76 **	0.00
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CEMENT MASON/CONCRETE FINISHER...	\$ 13.13 **	0.00
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DRYWALL HANGER AND METAL STUD INSTALLER.....	\$ 14.27 **	0.00
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GLAZIER.....	\$ 20.00	0.00
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HVAC MECHANIC (Installation of HVAC Unit Only).....	\$ 15.00	1.56
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INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13
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IRONWORKER, REINFORCING.....	\$ 13.35 **	0.00
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IRONWORKER, STRUCTURAL.....	\$ 20.50	5.15
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LABORER: Common or General.....	\$ 11.10 **	0.00
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LABORER: Mason Tender - Brick...	\$ 8.00 **	0.00
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LABORER: Mason Tender - Cement/Concrete.....	\$ 9.93 **	0.00
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LABORER: Pipelayer.....	\$ 12.49 **	2.13
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LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
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OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 13.59 **	1.60
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OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93 **	0.00
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OPERATOR: Bulldozer.....	\$ 18.29	1.31
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OPERATOR: Drill.....	\$ 16.22	0.34
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OPERATOR: Forklift.....	\$ 15.00	0.00
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OPERATOR: Grader/Blade.....	\$ 14.34 **	1.68
OPERATOR: Loader.....	\$ 14.01 **	0.44
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03	0.00
OPERATOR: Roller.....	\$ 13.11 **	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 13.00 **	0.00
ROOFER.....	\$ 13.75 **	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 19.00	5.73
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 14.62 **	0.00
TILE FINISHER.....	\$ 11.22 **	0.00
TILE SETTER.....	\$ 14.74 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.24 **	1.62
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

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

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

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and

the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

### Union Average Rate Identifiers

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

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

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## WAGE DETERMINATION APPEALS PROCESS

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

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

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



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

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

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

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

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

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

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

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

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END OF GENERAL DECISIO"

## TEXAS SALES TAX EXEMPTION INFORMATION

Under section 151.309 of the Texas Tax Code, the City of Waco is exempt the payment of sales tax. In addition, when the City contracts with a third party to make certain improvements to real property, purchases of materials/consumable items that are physically incorporated into that real property are also exempt from sales tax. In other words, materials and supplies that are entirely consumed or used up on a construction job for the City of Waco can be purchased without paying state and local sales tax. Items qualifying for this exemption must be used up entirely on a job for the City of Waco.

To claim this exemption, a contractor purchasing materials and supplies (as the buyer of the materials and supplies) will have to complete a Texas Sales and Use Tax Exemption Certification form to submit to the seller at the time of the purchase. The exemption form is available on the Texas Comptroller website at:

<http://www.window.state.tx.us/taxinfo/taxforms/01-forms.html>  
<http://www.window.state.tx.us/taxinfo/taxforms/01-339.pdf>

(The City of Waco will provide an executed exemption certification to the contractor awarded a construction contract to assist in making claim for the sales tax exemption for materials to be used under that contract.)

In completing the exemption form, a contractor will:

- (1) list itself as the purchaser, not the City of Waco;
- (2) fill in the name and required information about the seller;
- (3) describe the item being purchased or attached order or invoice – the only items included must be items that will be entirely consumed or used in the project for the City of Waco;
- (4) state reason for claiming the exemption (suggested wording – “Taxable item purchased for use under contract to improve realty for exempt organization, namely the City of Waco, Texas, for Project or Job No. \_\_\_\_” or “Materials/supplies will be used entirely in an exempt contract for the City of Waco, Texas, for Project or Job No. \_\_\_\_”).

The state statutes and rules related to sales tax can be accessed from the Texas Comptroller website:

<http://www.window.state.tx.us/taxinfo/sales/>

State statutes regarding sales tax can be found in Texas Tax Code Chapter 151 at:

<http://www.capitol.state.tx.us/statutes/docs/TX/content/htm/tx.002.00.000151.00.htm>

Rules related to sales tax in the Texas Administrative Code can be found at:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac\\_view=5&ti=34&pt=1&ch=3&sch=O&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=3&sch=O&rl=Y)  
 34 TAC Section 3.291 in Subchapter O deals specifically with Contractors.

**The above information is being provided to assist contractors and is therefore general in nature. It is not a substitute for advice from the contractor’s attorney or accountant.**

**PLEASE SIGN AND RETURN WITH BID**



# Texas Sales and Use Tax Resale Certificate

Name of purchaser, firm or agency as shown on permit	Phone (Area code and number)
Address (Street & number, P.O. Box or Route number)	
City, State, ZIP code	
Texas Sales and Use Tax Permit Number (must contain 11 digits)	
<div style="border: 1px solid black; width: 250px; height: 20px; margin: 5px 0;"></div>	
Out-of-state retailer's registration number or Federal Taxpayers Registry (RFC) number for retailers based in Mexico	
<div style="border: 1px solid black; width: 250px; height: 20px; margin: 5px 0;"></div> (Retailers based in Mexico must also provide a copy of their Mexico registration form to the seller.)	

I, the purchaser named above, claim the right to make a non-taxable purchase (for resale of the taxable items described below or on the attached order or invoice) from:

Seller: \_\_\_\_\_

Street address: \_\_\_\_\_

City, State, ZIP code: \_\_\_\_\_


Description of items to be purchased on the attached order or invoice:

Description of the type of business activity generally engaged in or type of items normally sold by the purchaser:

The taxable items described above, or on the attached order or invoice, will be resold, rented or leased by me within the geographical limits of the United States of America, its territories and possessions or within the geographical limits of the United Mexican States, in their present form or attached to other taxable items to be sold.

I understand that if I make any use of the items other than retention, demonstration or display while holding them for sale, lease or rental, I must pay sales tax on the items at the time of use based upon either the purchase price or the fair market rental value for the period of time used.

*I understand that it is a criminal offense to give a resale certificate to the seller for taxable items that I know, at the time of purchase, are purchased for use rather than for the purpose of resale, lease or rental, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.*

 Purchaser	Title	Date
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**This certificate should be furnished to the supplier.**  
**Do not send the completed certificate to the Comptroller of Public Accounts.**

# Texas Sales and Use Tax Exemption Certification

*This certificate does not require a number to be valid.*

Name of purchaser, firm or agency	
Address (Street & number, P.O. Box or Route number)	Phone (Area code and number)
City, State, ZIP code	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: \_\_\_\_\_


Street address: \_\_\_\_\_ City, State, ZIP code: \_\_\_\_\_

Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

*I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.*

 Purchaser	Title	Date
--	-------	------

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

***THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.***

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

**This certificate should be furnished to the supplier.**  
**Do not send the completed certificate to the Comptroller of Public Accounts.**

**VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE SECTION 2274.002**

**State law requires verification from a Company for contracts (which includes contracts formed through purchase orders) involving goods or services: (1) between a government entity and a Company with 10 or more full-time employees, and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.**

By signing below, Company hereby verifies the following:

1. Company does not boycott energy companies; and
2. Company will not boycott energy companies during the term of the contract.

**PRINT COMPANY NAME:** \_\_\_\_\_

**SIGNED BY:** \_\_\_\_\_

**Print Name & Title:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

The following definitions apply to this state statute:

(1) "Boycott energy company" means without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

(A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by Paragraph (A); and

(2) "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

**ATTACHMENT A****VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE SECTION 2274.002**

By signing below, Contractor hereby verifies that Section 2274.002 does not apply to this contract due to the following (check all that apply):

- ☐ Contractor is a sole proprietor; or
- ☐ Contractor has less than 10 full-time employees; or
- ☐ Contract value is for less than \$100,000.00.

**PRINT COMPANY NAME:** \_\_\_\_\_

**SIGNED BY:** \_\_\_\_\_

**Print Name & Title:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

**VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE SECTION 2274.002**

**State law requires verification from a Company for contracts (which includes contracts formed through purchase orders) involving goods or services: (1) between a government entity and a Company with 10 or more full-time employees, and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.**

By signing below, Company hereby verifies the following:

1. Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
2. Company will not discriminate during the term of the contract against a firearm entity or firearm trade association.

**PRINT COMPANY NAME:** \_\_\_\_\_

**SIGNED BY:** \_\_\_\_\_

**Print Name & Title:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

The following definitions apply to this state statute:

(1) "Ammunition" means a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile;

(2) "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit;

(3) "Discriminate against a firearm entity or firearm trade association":

(A) means, with respect to the entity or association, to:

(i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;

(ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or

(iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and

(B) does not include:

(i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and

(ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:

(aa) to comply with federal, state, or local law, policy, or regulations or a directive

by a regulatory agency; or

(bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association;

(4) "Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases;

(5) "Firearm accessory" means a device specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and an item used in conjunction with or mounted on a firearm that is not essential to the basic function of the firearm. The term includes a detachable firearm magazine;

(6) "Firearm entity" means:

(A) a firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; and

(B) a sport shooting range as defined by Section 250.001, Local Government Code;

(7) "Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:

(A) is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;

(B) has two or more firearm entities as members; and

(C) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.



## ATTACHMENT A

### VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE SECTION 2274.002

By signing below, Contractor hereby verifies that Section 2274.002 does not apply to this contract due to the following (check all that apply):

- ☐ Contractor is a sole proprietor; or
- ☐ Contractor has less than 10 full-time employees; or
- ☐ Contract value is for less than \$100,000.00.

**PRINT COMPANY NAME:** \_\_\_\_\_

**SIGNED BY:** \_\_\_\_\_

**Print Name & Title:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

**VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE SECTION 2271.002**

**State law requires verification from a Company for contracts (which includes contracts formed through purchase orders) involving goods or services: (1) between a government entity and a Company with 10 or more full-time employees, and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.**

By signing below, Company hereby verifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

**PRINT COMPANY NAME:** \_\_\_\_\_

**SIGNED BY:** \_\_\_\_\_

**Print Name & Title:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

The following definitions apply to this state statute:

(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

**ATTACHMENT A**

**VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE SECTION 2271.002**

By signing below, Contractor hereby verifies that Section 2271.002 does not apply to this contract due to the following (check all that apply):

- ☐ Contractor is a sole proprietor; or
- ☐ Contractor has less than 10 full-time employees; or
- ☐ Contract value is for less than \$100,000.00.

**PRINT COMPANY NAME:** \_\_\_\_\_

**SIGNED BY:** \_\_\_\_\_

**Print Name & Title:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_



## INFORMATION ABOUT FORM 1295 DISCLOSURE

Beginning January 1, 2016, a business entity entering into a contract which is approved by the Waco City Council for services, goods or other property to be used by the City of Waco was required to complete a Certificate of Interested Parties Form 1295 on the Texas Ethics Commission website. A Form 1295 may also be required if a contract with the City is changed, amended, extended, or renewed.

House Bill 1295 found in Texas Government Code Chapter 2252 requires a “business entity” that:

- (1) enters into a contract which must be approved by the Waco City Council
- (2) for services, goods or other property
- (3) to be used by the City of Waco

to complete a Certificate of Interested Parties Form 1295 on the Texas Ethics Commission website. **"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. It includes for-profit and non-profit entities. A contract with an individual is not a contract with a business entity.** A Form 1295 is not required for contracts with a publicly traded business entity, including a wholly owned subsidiary of the business entity.

The Texas Ethics Commission has adopted rules to implement the law and adopted the Certificate of Interested Parties form (Form 1295). The Commission states that it does not have any additional authority to enforce or interpret House Bill 1295 (approved in 2015).

**Form 1295 requires disclosure of interested parties** (a) who have a controlling interest in a business entity with whom the government entity contracts or (b) who actively participate in facilitating a contract or negotiating the terms of a contract (such as a broker, advisor, or attorney for business entity) if the person receives compensation from the business entity (but is not an employee of the entity) and communicates directly with the governmental entity regarding the contract. A person has a controlling interest if the person: (1) has an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) has membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) serves as an officer of a business entity that has four or fewer officers, or serves as one of the four officers most highly compensated by a business entity that has more than four officers.

### **Filing Process:**

The Texas Ethics Commission has made the filing Form 1295 available on its website as an electronic form at: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

A business entity entering into a contract for services, goods or other property with the City of Waco must use that website application to enter the required information on Form 1295 and then print or download a copy of the form. The printed Form 1295 will have unique certification number assigned by the Commission in the upper right part of the Form. An authorized agent of the business entity must sign a printed copy of the Form. The executed Form 1295 must be filed with the City of Waco. The form can be scanned and emailed to the City, faxed to the City, mailed to the City, or delivered to the City. The City is then required to notify the Commission using the Commission’s website that the Form 1295 has been received by the City. The information from the completed Form 1295 will then be posted on the Commission’s website.

## PROCEDURE TO PROTEST AWARD RECOMMENDATION

- A. If a firm or person believes it is injured as a result of an RFB, a written protest may be filed.
- B. The written protest may be delivered to the City's Purchasing Services Department ("Purchasing") in person to the department offices located at **1415 N. 4th St., Waco, Texas, 76707**, or by certified mail, return receipt requested, to the following address:  

**Purchasing Services c/o City of Waco**  
**Post Office Box 2570**  
**Waco, Texas 76702-2570**
- C. The written protest must be filed no later than 5:00 p.m. on the fifth (5th) business day from the date of receipt of notification of the recommendation for the contract award.
- D. The written protest must include the following information before it may be considered:
  - 1. Name, mailing address, and business phone number of the protesting party;
  - 2. Identification of the RFB being protested;
  - 3. A precise and concise statement of the reason(s) for the protest which should provide enough factual information to enable a determination of the basis of the protest; and
  - 4. Any documentation or other evidence supporting the protest.
- E. In conjunction with the department that requested the RFB, Purchasing will attempt to resolve the protest, which may at Purchasing's discretion include meeting with the protesting party. If the protest is successfully resolved by mutual agreement, written verification of the resolution of each ground addressed in the protest will be provided to the city manager or designee assistant city manager.
- F. If the Purchasing is unable to resolve the protest, the protesting party may request the protest be reviewed and resolved by the city manager or designee assistant city manager.
- G. A request for the city manager's review must be in writing and received by the Purchasing within three (3) business days from the date the Purchasing informs the protesting party the protest cannot be resolved. The request for review must be delivered in person to the Purchasing at the address stated above or by certified mail, return receipt requested, to the mailing address stated above.
- H. If a protesting party fails or refuses to request a review by the city manager within the three (3) days, the protest is deemed finalized and no further review by the city is required.
- I. Applicable documentation and other information applying to the protest may be submitted by the protesting party to the Purchasing before review by the city manager. If the protesting party requests a review by the city manager, such documentation will be forwarded to the city manager or designee assistant city manager for consideration. The city manager or designee assistant city manager may likewise notify the protesting party or any city department to provide additional information. The decision reached by the city manager or designee assistant city manager will be final, but the protesting party may still appear before the City Council during the Hearing of the Visitors session of a City Council meeting.

# DRAFT AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«»Cameron Park Zoo  
Education Center and Vet Hospital Complex  
1701 N 4<sup>th</sup> St  
Waco, TX 76707  
«»

THE OWNER:

(Name, legal status and address)

« »« »City of Waco, Texas, a Texas Home Rule Municipality  
« »P.O. Box 2570, Waco, Texas 76702-2570

THE ARCHITECT:

(Name, legal status and address)

«»«»Perkins+Will, Inc  
1001 McKinney, Suite 1300  
«»Houston, TX 77002

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

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

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



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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) ~~and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract.~~ A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.~~

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and

applicable standards, codes, and ordinances, the Contractor shall either provide the greater quantity of work or comply with the more stringent requirement.

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

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

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

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

**§ 1.5.3** Notwithstanding anything to the contrary, the Owner shall be the owner of all Instruments of Service, including all Drawings, Specifications, and other documents, prepared by the Architect and the Architect's consultants under their respective professional services agreement for the Project.

### **§ 1.6 Notice**

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

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

### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building



~~Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

## **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

~~**§ 2.1.2** The Owner shall 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 shall 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.~~

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

~~**§ 2.2.1** The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Contractor's obligations under the Contract. Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

~~**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start up, plus interest as provided in the Contract Documents.~~

~~**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

## § 2.3 Information and Services Required of the Owner

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

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

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

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

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

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

## § 2.4 Owner's Right to Stop the Work

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

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Each Contractor shall agree that the Owner may place and install as much equipment and furnishing during the progress of the work as Owner deems necessary before the completion of the various parts of the Work and may occupy portions of the Work before substantial completion of the entire work, and further agrees that such placing and installing of equipment and furnishings or occupancy of portions of the Work shall not in any way evidence the substantial completion of the entire work or signify the Owner's acceptance of the entire work.

**ARTICLE 3 CONTRACTOR****§ 3.1 General**

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

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

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. If a dimensional discrepancy exists, Contractor shall take field measurements required for proper fabrication and installation of work. Upon commencement of any item of work, Contractor shall be responsible for dimensions related to such item of Work and shall make any corrections necessary to make work properly fit at no additional cost to Owner.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

**§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, 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 shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods,

~~techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.~~

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Before ordering any material or doing any work, Contractor shall verify dimensions and check condition in order to assure himself that they properly reflect those on the Drawings. Any inconsistency shall be brought to attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions, of which Architect was not notified beforehand, costs to correct such discrepancies shall be borne by Contractor.

### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 By making requests for substitutions, the Contractor represents that the Contractor

- .1 has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

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

### § 3.5 Warranty

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

**§ 3.6 Taxes**

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

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

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

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

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

**§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

**§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.
- .4 Contractor shall prepare and submit to Owner for approval a written work order specifying the work to be performed and amounts related to such for the Owner's written acceptance prior to performing any work to be charged to an Owner's allowance or contingency item.



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

§ 3.8.4 All allowance balances remaining accrue to the Owner.

**§ 3.9 Superintendent**

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

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

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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

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

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

limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, 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, 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), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. IF CONTRACTOR FAILS TO PROVIDE THE INSURANCE REQUIRED IN ARTICLE 11 OF THE GENERAL~~



CONDITIONS NAMING OWNER AS ADDITIONAL INSURED, THEN CONTRACTOR AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE SERVICES RENDERED UNDER THIS AGREEMENT, AND HEREBY AGREES TO INDEMNIFY, PROTECT, AND HOLD HARMLESS THE OWNER, THE ARCHITECT, THEIR OFFICERS, OFFICIALS, CONSULTANTS, AGENTS, EMPLOYEES AND SERVANTS, OF AND FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTIONS OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS AND ANY LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY OR IN CONNECTION WITH THE SERVICES TO BE RENDERED HEREUNDER, WHETHER OR NOT SAID CLAIMS, DEMANDS, CAUSES OF ACTIONS ARE CAUSED BY THE SOLE NEGLIGENCE OF THE OWNER, THE ARCHITECT, THEIR CONSULTANTS, AGENTS, EMPLOYEES, OR SERVANTS, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE OWNER OR THE ARCHITECT AND A PARTY TO THIS AGREEMENT, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE OWNER OR THE ARCHITECT AND SOME OTHER THIRD PARTY. IF CONTRACTOR PROVIDES THE APPROPRIATE INSURANCE NAMING OWNER AS AN ADDITIONAL INSURED, THEN THIS SECTION SHALL NOT APPLY. CONTRACTOR FURTHER AGREES TO WAIVE ANY AND ALL CLAIMS AND SUITS COVERED BY THE INDEMNITY AGREEMENT AND AGREES THAT ANY INSURANCE CARRIER INVOLVED SHALL NOT BE ENTITLED TO SUBROGATION UNDER ANY CIRCUMSTANCES AGAINST THE OWNER, THE ARCHITECT, THEIR OFFICERS, OFFICIALS, CONSULTANTS, AGENTS, AND EMPLOYEES OR SERVANTS.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### **ARTICLE 4 ARCHITECT**

##### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

##### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 Communications

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

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

### § 5.3 Subcontractual Relations

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

**§ 5.4 Contingent Assignment of Subcontracts**

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS****§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.~~

**§ 6.1.5** It is a requirement of the Contractor's work schedule to provide the cooperation, coordination and exchange of information necessary for a timely execution of separate contract work.

**§ 6.1.6** Coordinated construction work under this Contract includes, but is not limited to, providing concealed blocking as noted for attachment of separate contract items in locations necessary for the actual items to be installed. Providing proper dimensional coordination of separate contract supplied items for general construction work and trim that is to meet and/or adjoin Furniture, Fixtures, Equipment and Accessories.

**§ 6.2 Mutual Responsibility**

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

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

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

§ 7.2.2 Except as provided in this article, no order, oral statement, or direction of Architect or Owner shall be treated as a Change Order or entitle Contractor to an adjustment to the Contract Sum or the Contract Time.

§ 7.2.3 Notice to Surety Regarding Consent. Contractor shall notify and obtain the consent and approval of Contractor's surety with reference to all Change Orders in such notice, consent or approval is required by Contractor's surety or by law. Contractor's execution of the Change Order shall constitute Contractor's warranty to Owner that the surety has been notified of and consents to such Change Order, and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented hereto.



### § 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor disagrees in writing within 10 days of the date of the Construction Change Directive with the method of adjustment in the Contract Sum, the method and adjustment shall be determined as a Claim. does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### ARTICLE 8 TIME

#### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

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

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere the Work prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.2.4 Failure by the Contractor to commence actual physical work on the project within seven (7) days from the Date of Commencement, as established in the Notice to Proceed, will entitle the Owner to consider the Contractor in default of its obligations under this Contract. In this event, the Owner may withdraw the Notice to Proceed and terminate the Contract in accordance with the Contract Documents.

#### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or (2) by changes ordered in the Work; or (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond Contractor's control, or by delay authorized by the Owner pending mediation, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the parties may determine. However, the Contract Time shall not be extended if Contractor is

delayed in commencement or progress of the Work by an act or neglect of the Contractor or of persons or entities for whom the Contractor is responsible, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

**§ 8.3.4** Seasonal weather conditions shall be considered in the planning and scheduling of work influenced by high or low ambient temperature or precipitation to ensure the completion of the Work within the Contract Time. No time extensions will be granted for the Contractor's failure to take into account such weather conditions for the location of the Work and for the period of time in which the Work is to be accomplished.

**§ 8.3.5** The time estimated for completion of the entire work ready for use includes the number of calendar days for anticipated delays due to normal weather conditions. No time extension for delays due to weather will be allowed until and unless such delays exceed the time included for normal weather delays. In case of claims for extension of time because of abnormal inclement weather, such extension of time shall be granted only because such abnormal inclement weather prevented the execution of major items of work on normal working days.

**§ 8.3.6** A weather table reflecting the meteorological data from Waco, Texas follows and will be used to determine Contract time extensions due to abnormally inclement weather. For the purpose of this Contract "Abnormal Inclement Weather" will be interpreted as the number of days in excess of the normal on which rainfall exceeds 0.01 inch or snow/ice pellets exceed 1.0 inch. Extension of time to complete the project will be based on calendar days.

#### MONTHLY ANTICIPATED ADVERSE WEATHER DELAY.

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
7	7	8	7	9	6	5	5	6	6	7	7

**§ 8.3.6.1** Document, in writing, that the weather on the particular day was of such nature (rain, wind, snow, ice, and subsequent resultant effects) that it significantly impacted its ability to make progression critical path work items. Inclement weather delay days will not be granted for weekends or holidays unless Contractor can demonstrate that it had been intended to work on these days.

**§ 8.3.6.2.** Submit such delay claims on a weekly basis, not more than 7 days following the day of occurrence.

**§ 8.3.6.3** Summarize the number the days claimed for the entire month accompanying each month's application for payment.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

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



submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 Contractor shall submit to Architect and Owner within 15 days of execution of Owner-Contractor Agreement proposed sample of Waiver and Bills Paid affidavit forms for review and acceptance for this Contract.

§ 9.3.5 Monthly Application for Payment shall include waivers of liens for all work included in previous months' application for payment. Waiver of Liens for subcontractors and materialmen shall be total amount paid prior to previous months' application for payment.

§ 9.3.6 With each Application of for Payment, Contractor shall certify that such Application for Payment represents a just estimate of cost reimbursable to Contractor under terms of the Contract Documents and shall also certify that there are not any Mechanics' or Materialmens' Liens outstanding at date of the Application for Payment, that all due and payable bills with respect to Work have been paid to date or shall be paid from proceeds of that Application for Payment, and that there is no known basis for filing any Mechanics' or Materialmens' Liens against Surety in connection with Work.

§ 9.3.7 Unless otherwise stated in the Owner-Contractor Agreement, the Owner will retain, until Final Payment, 10 percent of the amount due the Contractor on account of progress payment, payable 30 days after Substantial Completion and/or satisfactory evidence to the Owner that all payment, bills, and claims have been paid.

### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly

due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, ~~to the best of the Architect's knowledge, information, and belief,~~ the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief based upon the due inquiry and inspection, the quality of the Work is in accordance with the Contract Documents. ~~The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.~~

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

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

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or as provided herein, awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## § 9.8 Substantial Completion

§ 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.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of

items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in ~~the such~~ Certificate. Upon such acceptance, ~~and consent of surety, if~~ any, the Owner shall make payment of a sum sufficient to increase the total payments to ninety percent (90%) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work or Work not in accordance with the Contract Documents, retaining applicable to such Work and unsettled claims, retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with



the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 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 shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

## **§ 9.11 LIQUIDATED DAMAGES**

**§ 9.11.1** Contractor and contractor's surety, if any, shall be liable for and shall pay Owner the amount of seven hundred fifty dollars (\$750.00) as liquidated damages for each calendar day of delay until the Work is substantially complete.

**§ 9.11.12** It is understood and agreed between the Owner and Contractor that, if the said Contractor shall neglect, fail, or refuse to complete the Work within the time called for, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as part consideration for awarding of this Contract, to pay the Owner the amount stipulated above, not as penalty, but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Owner may, by written or electronic means, request to review the Contractor's written Safety Plan/Program and injury rates. Contractor shall provide the Owner with this information within 10 business days.

### **§ 10.2 Safety of Persons and Property**

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

- .1 employees on the Work and other persons who may be affected thereby;

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.4.1 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner reasonable advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### **§ 10.2.8 Injury or Damage to Person or Property**

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

#### **§ 10.3 Hazardous Materials and Substances**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change

Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and startup, which adjustments shall be accomplished as provided in Article 7. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall 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), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency 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 shall reimburse the Contractor for all cost and expense thereby incurred.

## **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 Contractor's Insurance and Performance and Payment Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall keep and maintain the insurance required for this project as provided in the insurance and indemnification requirements contained in the project's request for bids or request for proposals, as applicable. provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. Contractor shall furnish Performance Bond and Payment Bond as part of Contract. Firm issuing bonds must be licensed to write bonds in state where Project is being constructed. Contractor shall pay premiums for required bonds and cost thereof shall be included in Contract sum. Obtaining bonds by Contractor shall be a condition precedent to Contract between Owner and Contractor. Amount of each bond shall be equal to 100 percent of Contract Sum.

§ 11.1.3.1 Contractor shall deliver required bonds to Owner on or before the date of execution of the Agreement is entered into.

§ 11.1.3.2 Contractor shall require attorney-in-fact who executes required bonds on behalf of surety to affix thereto a certified copy of power of attorney executed the same day as Contractor-Owner Agreement.

§ 11.1.3.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.5 When there is a cancellation, non-renewal, or material change in coverage which is not made pursuant to a request by City, Contractor shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Contractor knows of said change in advance, or ten (10) days notice after the change, if the Contractor did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following addresses:

City of Waco	City of Waco	Owner's Representative as set
<u>Purchasing</u>	<u>Risk Management Department</u>	<u>forth in the Agreement.</u>
P.O. Box. 2570	P.O. Box 2570	
Waco, Texas 76702-2570	Waco, Texas 76702-2570	

§ 11.1.6 If Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor or stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

§ 11.1.7 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this agreement.

§ 11.1.8 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City of Waco for liability arising out of operations under this contract.

§ 11.1.9 Subcontractors must meet the requirements and amounts as stated above. The cost of this insurance shall be included in the Contractor's Bid.



## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## § 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

## § 11.4 ~~Loss of Use, Business Interruption, and Delay in Completion Insurance~~

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~ **BUILDER'S RISK INSURANCE.** Contractor shall purchase and maintain,

from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Contractor's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 2.4 herein, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees, if any, as loss payees.

### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a

written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

§ 13.1.1 The Contract shall be governed by the laws of the State of Texas. The obligations and undertakings of each of the parties to this agreement shall be performable in McLennan County, Texas, of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.1.2 The Contractor's services shall be performed in accordance with the standard of care applicable in the jurisdiction in which the Project is located.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall 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 shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties 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.

### § 13.6 Owner Provided Items

Certain work identified by "NIC" (Not In Contract), "Provided by Owner/Others", "Owner Furnished, Owner Installed", "OFOI", or other similar nomenclature may be provided by Owner or Owner's Separate Contractor. Contractor agrees to allow Owner or his representative to have access to the building to install or instruct such items prior to substantial completion, provided that the work schedule will be coordinated with the Contractor.

### § 13.7 Equal Employment Opportunity

§ 13.7.1 The Owner is committed to providing equal opportunity to suppliers of products and services without regard to race, color, religion, handicap, national origin, sex or age. The Contractor shall agree that, during the term of this

Contract, it shall not discriminate against any applicant for employment, or any independent Contractor, Sub-Contractor or Supplier on the basis of any of the aforementioned.

§ 13.7.2 Drug-free facility. Accordingly, Contractors working on the Owner's property or in Owner's Facilities (whether leased or owned) are responsible for establishing and maintaining an effective drug screening program to assure to Owner that Contractor's employees, and those of its Sub-Contractors, are in fact drug-free. Contractor and its Sub-Contractors are responsible for arranging for screening (Owner does not provide or arrange for such services) and are responsible for all related costs. Contractor and its Sub-Contractors shall provide to Owner, upon request, documentation evidencing an in-place, effective drug screening program and, again upon request, drug screening test results for individual employees working on Owner property. Owner also specifically retains the right to "spot check" any individual who exhibits signs of drug-influenced behavior while on Owner's property (whether leased or owned). Further information regarding Owner's drug free environment requirements is available through Risk Management Department.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .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 Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly-persistently disregards applicable laws, statutes, ordinances, or rules, codes, rules and regulations, or lawful orders of a public authority having jurisdiction; or



- ~~.4 otherwise is guilty of substantial breach of a provision of the Contract Documents, fails to complete the Work, or any separable part of the Work, with the diligence, resources and skill that will ensure its completion within the time specified in the Contract Documents, including any authorized adjustments;~~
- ~~.5 fails to prosecute the Work, or any separable part of the Work, with the diligence, resources and skill that will ensure its completion within the time specified in the Contract Documents, including any authorized adjustments;~~
- ~~.6 files a voluntary petition in bankruptcy or be deemed bankrupt under such bankruptcy laws or provisions which would not allow the Contractor to fulfill its obligations and agreements under this Contract;~~
- ~~.7 institutes or suffers to be instituted any proceeding for a reorganization or rearrangement of its affairs;~~
- ~~.8 makes an assignment for the benefit of creditors, if such assignment would prohibit Contractor from fulfilling its obligations under this Contract. Contractor shall give notice to Owner of any such assignment;~~
- ~~.9 becomes insolvent or have a receiver of asset or property appointed; or~~
- ~~.10 defaults in the performance of any requirement, term or condition of this Contract and such default continues for a period of ten (10) days after the receipt of written notice from City of said default.~~

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ the Owner may, without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- ~~.1 e~~Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- ~~.2 a~~Accept assignment of subcontracts pursuant to Section 5.4; and
- ~~.3 f~~Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 ~~Time Limits on Claims~~

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

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

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

**§ 15.1.7 Waiver of Claims for Consequential Damages**

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

- .1 damages incurred by the Owner for rental expenses, 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
- .2 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 Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, ~~excepting~~including those alleging an error or omission by the Architect but excluding those arising under Paragraphs 10.3 through 10.4, shall be referred to the Initial Decision Maker for initial decision, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision by the Initial Decision Maker shall be required as a condition precedent to mediation or litigation of any Claim arising prior to the date final payment is due, unless 30 days have passed. ~~If an initial decision has not been rendered within 30 days after after~~ the Claim has been referred to the Initial Decision Maker with no decision having been rendered, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker Architect and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** ~~In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will approve or reject Claims by written decision, which shall state the reason therefore and which shall 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 shall be final and binding on the parties but subject to mediation and litigation. ~~render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.



§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.67, shall be subject to mediation ~~as a condition precedent to binding dispute resolution.~~

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be ~~administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall 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. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings in accordance with the procedures outlined in Chapter 154 of the Texas Civil Practice and Remedies Code. Request for mediation shall be filed in writing with the other party to the Contract.~~

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 15.4 Arbitration

§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

§ 15.4.1.1 ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

**§ 15.4.2** ~~The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

**§ 15.4.3** ~~The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

**§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

**§ 15.4.4.2** ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

**§ 15.4.4.3** ~~The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

**DRAFT AIA® Document A101® – 2017****Standard Form of Agreement Between Owner and Contractor**  
*where the basis of payment is a Stipulated Sum*

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

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

City of Waco  
PO Box 2570  
Waco, TX 76702

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

« »« »  
« »  
« »  
« »

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

Cameron Park Zoo  
Education Center and Vet Hospital Complex  
1701 N 4<sup>th</sup> St  
Waco, TX 76707

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

Perkins+Will, Inc  
1001 McKinney, Suite 1300  
Houston, TX 77002

The Owner and Contractor agree as follows.

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

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

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

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

## TABLE OF ARTICLES

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

## EXHIBIT A INSURANCE AND BONDS

## ARTICLE 1 THE CONTRACT DOCUMENTS

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

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

*(Check one of the following boxes.)*

☐ The date of this Agreement.

☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

<< >>

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

## § 3.3 Substantial Completion

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

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

[ « » ] Not later than « » ( « » ) calendar days from the date of commencement of the Work.

[ « » ] By the following date: « »

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

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

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

#### § 4.2 Alternates

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

Item	Price

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

Item	Price	Conditions for Acceptance

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

Item	Price

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

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

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

« » If work is not completed as set forth in Article 3, Contractor will pay Owner as liquidated damages the sum of seven hundred fifty dollars (\$750.00) for each calendar day after such time that the work remains incomplete, calculated in accordance with the provisions of the Contract Documents. Final completion will be reached on or before fourteen days after the Certificate of Substantial Completion is issued. If work is not completed by such time, Contractor shall pay to owner additional liquidated damages of seven hundred fifty dollars (\$750.00) per day for each calendar day after such time that Final Completion is not reached.

§ 4.6 Other:

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

<< >>

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

<< >>

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the «10th» day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the «10th» day of the «following» month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «thirty» («30») days after the Architect receives the Application for Payment.

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

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

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

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

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

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

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

<< » 10% retention, as required by law

§ 5.1.7.1.1 The following items are not subject to retainage:

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

<< » none

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

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

<< » none

§ 5.1.7.3 ~~Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~

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

<< »

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

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

## § 5.2 Final Payment

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

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

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

<< »

## § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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

<< » % << »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.



*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

<< >>  
<< >>  
<< >>  
<< >>

## § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

<< >>

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

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

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

<< >>

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

## ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner's representative:

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

<< >> [Derrick Oltmann](#)  
<< >> [Senior Facilities Project Manager](#)  
<< >> [PO Box 2570](#)  
<< >> [Waco, TX 76702](#)  
<< >> [\(254\) 750-8027](#)  
<< >> [derricko@wacotx.gov](mailto:derricko@wacotx.gov)

§ 8.3 The Contractor's representative:

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

<< >>



<< >>  
<< >>  
<< >>  
<< >>  
<< >>

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

#### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

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

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

<< >> Instruments of Service or any other information or documentation may be delivered in digital form via email to the party's representative at the email address provided in Article 8. Read receipts are not required.

§ 8.7 Other provisions:

<< >>

### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

<< >>

- .5 Drawings

**Number**

**Title**

**Date**

- .6 Specifications

**Section**

**Title**

**Date**

**Pages**

- .7 Addenda, if any:

**Number**

**Date**

**Pages**

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

**.8 Other Exhibits:**

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ ☐ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

« »

[ ☐ ] The Sustainability Plan:

Title	Date	Pages

[ ☐ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

**.9 Other documents, if any, listed below:**

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

« » City of Waco RFP 2022-XXX and all Addenda  
XXX RFP 2022-XXX response

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

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

« Bradley Ford » « City Manager »

(Printed name and title)

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

« » « »

(Printed name and title)

**Performance Bond****Page 2**

Bond No. \_\_\_\_\_

**PERFORMANCE BOND**

Required by City of Waco where contract is over \$100,000

**STATE OF** TEXAS  
**COUNTY OF** McLENNAN

**KNOW ALL BY THESE PRESENTS:** That we (1) \_\_\_\_\_  
 \_\_\_\_\_, (2) a \_\_\_\_\_ of (3) \_\_\_\_\_  
 hereinafter called **Principal** and (4) \_\_\_\_\_  
 \_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_,  
 which is duly authorized to do business in the State of Texas and is hereinafter called **Surety**, are  
 held and firmly bound unto City of Waco of McLennan County, Texas in the amount of \_\_\_\_\_  
 \_\_\_\_\_ Dollars  
 (\$ \_\_\_\_\_) in lawful money of the United States, to be paid in McLennan  
County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our  
 heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into  
 a certain contract with City of Waco dated the (5) \_\_\_\_\_ day of \_\_\_\_\_,  
 A.D., 20\_\_\_\_, a copy of which is hereto attached and make a part hereof for the construction of:

- |   |
|---|
| <p>(1) Correct legal name of Contractor<br/>         (2) A Corporation, a Partnership, Limited Liability Company or an Individual, whatever the business entity form<br/>         (3) City and state of contractor's office<br/>         (4) Correct name of Surety along with city and state<br/>         (5) Leave dates blank. City will fill in with date of City Council action.</p> |
|---|

**NOW THEREFORE**, if the Principal shall well, truly and faithfully perform the work in  
 accordance with the plans, specifications and contract documents during the original term  
 thereof, and any extensions thereof which may be granted by the City of Waco, with or without  
 notice to the Surety, and if Principal shall fully satisfy all claims and demands incurred under  
 such contract, and shall fully indemnify and save harmless the City of Waco from all costs and  
 damages which it may suffer by reason of failure to do so, and shall reimburse and repay the  
 City of Waco all outlay and expense which the City of Waco may incur in making good any  
 default, then this obligation shall be void. Otherwise, this obligation remains in full force and  
 effect.

For value received, Surety hereby stipulates and agrees that no change, extension of  
 time, alteration or addition to the terms of the Contract or to the work performed thereunder, or  
 the plans, specifications, drawings, etc. accompanying same, with or without notice to Surety,  
 shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such  
 change, extension of time, alteration or addition to the terms of the Contract or to the work to be  
 performed thereunder.

**Performance Bond****Page 2**

Surety's telephone number is (\_\_\_\_\_) \_\_\_\_\_. Any notice of claim shall be sent to Surety at:

Mailing address: \_\_\_\_\_

Address of surety company: \_\_\_\_\_.

**IN WITNESS WHEREOF**, this instrument is executed, this the \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_.

**NOTE: Date of Bond must NOT be prior to date of Contract or date of Council action, whichever is later.**

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

\_\_\_\_\_  
Principal - Contractor\*

(Corporate Seal)

BY: \_\_\_\_\_

\_\_\_\_\_  
Witness as to Principal

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

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

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

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

\_\_\_\_\_  
Surety

(Surety Seal)

BY: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Witness to Surety

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

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

\_\_\_\_\_

\*If Contractor is Partnership, all partners should execute bond. Use extra pages if necessary.

Form 09/22/2016

Bond No. \_\_\_\_\_

**PAYMENT BOND**

Required by City of Waco where contract is over \$50,000

**THE STATE OF** TEXAS  
**COUNTY OF** McLENNAN

**KNOW ALL MEN BY THESE PRESENTS:** That we (1) \_\_\_\_\_  
 (2) \_\_\_\_\_ of (3) \_\_\_\_\_ hereinafter called  
 Principal and (4) \_\_\_\_\_  
 \_\_\_\_\_ of \_\_\_\_\_, State of \_\_\_\_\_  
 \_\_\_\_\_, which is duly authorized to do business in the State of Texas and is hereinafter called  
 Surety, are held and firmly bound unto THE CITY OF WACO of McLENNAN COUNTY, TEXAS,  
 and unto all persons, firms, and corporations, who may furnish materials for, or perform labor upon  
 the building or improvements hereinafter referred to in the amount of

\_\_\_\_\_ Dollars  
 (\$ \_\_\_\_\_) in lawful money of the United States, to be paid in McLENNAN  
COUNTY, TEXAS, for the payment of which sum well and truly to be made, we bind ourselves,  
 our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that whereas, the Principal entered into a  
 certain contract with THE CITY OF WACO dated the (5) \_\_\_\_\_ day \_\_\_\_\_, A.D.,  
 20\_\_\_\_, a copy of which is hereto attached and made a part hereof for \_\_\_\_\_  
 \_\_\_\_\_ (herein called the "Work").

- (1) Correct name of Contractor
- (2) A Corporation, a Partnership, Limited Liability Company or an Individual, whatever the business entity form
- (3) City and state of contractor's office
- (4) Correct name of Surety along with city and state
- (5) Leave dates blank. City will fill in with date of City Council action.

**NOW, THEREFORE**, the condition of this obligation is such that, if the Principal shall promptly make payment to all payment bond beneficiaries as defined in Chapter 2253 of the Texas Government Code, supplying labor and materials in the prosecution of the work provided for in said Contract, then this obligation shall be null and void; otherwise the obligation shall remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed under the Contract, with or without notice to Surety, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed under the Contract.

The Surety agrees to pay the City of Waco upon demand all loss and expense, including attorney's fees and court costs, incurred by the City of Waco by reason of or on account of any breach of this obligation by the Surety.

**Payment Bond****Page 2**

This bond is made for and entered into solely for the protection of all payment bond beneficiaries supplying labor and materials in the prosecution of the work provided for in said contract, and all such payment bond beneficiaries shall have a direct right of action under the bond as provided in Chapter 2253 of the Texas Government Code.

**PROVIDED FURTHER**, that no final settlement between the City of Waco and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Surety's telephone number is (\_\_\_\_\_) \_\_\_\_\_. Any notice of claim shall be sent to Surety at:

Mailing address: \_\_\_\_\_

Address of surety company: \_\_\_\_\_

**IN WITNESS WHEREOF**, this instrument is executed, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_.

**NOTE: Date of Bond must NOT be prior to date of Contract or date of Council action, whichever is later.**

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(Corporate Seal)

\_\_\_\_\_  
Witness as to Principal

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

ATTEST:

\_\_\_\_\_  
(Surety) Secretary

(Surety Seal)

\_\_\_\_\_  
Witness to Surety

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

\_\_\_\_\_

\_\_\_\_\_  
Principal - Contractor\*

BY: \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_  
Surety

BY: \_\_\_\_\_

Attorney-in-Fact

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

\_\_\_\_\_

\*If Contractor is Partnership, all partners should execute bond. Use extra pages if necessary.

## **APPENDIX C**

### **Forms to Complete and Return**

- (1) Submission of Bid/Proposal and Acknowledgment of Addenda
- (2) Business Identification Form
- (3) Conflict of Interest Questionnaire (CIQ form)
- (4) Disclosure of Relationships with City Council/Officers (City Charter)
- (5) Minority/Women Owned Business
- (6) Litigation Disclosure
- (7) Certification Regarding Debarment
- (8) Non-collusion Affidavit
- (9) Resident Certification
- (10) Texas Public Information Act
- (11) Drug Free Workplace



## SUBMISSION OF BID AND ACKNOWLEDGMENT OF ADDENDA RFQ No.

### 2022-084 ISSUED BY CITY OF WACO, TX

The entity identified below hereby submits its response to the above identified RFB. The entity affirms that it has examined and is familiar with all of the documents related to RFB.

#### DECLARATION OF INTENT

As per the "SUBSTITUTIONS" section of the "STANDARD INSTRUCTIONS FOR ALL BIDS" contained within these bid documents, I attest that the bid submitted is: (check one box below)

- ☐ 1. to the exact Specifications and the Terms and Conditions of the bid documents.
- ☐ 2. to the exact specifications with modifications to the Specifications and/or the Terms and Conditions as noted in the attached documentation.
- or
- ☐ 3. NOT to the exact Specifications and/or the Terms and Conditions and is therefore an alternate bid, submitted for the City's consideration, with attached justification(s) and documentation defending the alternate bid as meeting or exceeding the intent of the specifications or scope of work.

Submitter further acknowledges receipt of the following addenda:

Addendum No \_\_\_\_ issued \_\_\_\_\_

Addendum No \_\_\_\_ issued \_\_\_\_\_

Addendum No \_\_\_\_ issued \_\_\_\_\_

Addendum No \_\_\_\_ issued \_\_\_\_\_

Addendum No \_\_\_\_ issued \_\_\_\_\_

Addendum No \_\_\_\_ issued \_\_\_\_\_

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

Proposal of (entity name) \_\_\_\_\_

Signature of Person Authorized  
to Sign Submission: \_\_\_\_\_

Signor's Name and Title  
(print or type): \_\_\_\_\_

**PLEASE SIGN AND RETURN WITH BID**





## BUSINES ENTITY IDENTIFICATION

To identify the appropriate person to execute documents, please fill in this form:

Full Legal Name of Business Entity: \_\_\_\_\_

Doing Business As (assumed name): \_\_\_\_\_

Main Contact Person: \_\_\_\_\_

Registered Office Address: \_\_\_\_\_

Business Phone #: \_\_\_\_\_ Fax#: \_\_\_\_\_

Email Address: \_\_\_\_\_ DUNS Number: \_\_\_\_\_

**Check the appropriate box to designate the type of business entity and complete the information below.**

Is entity: ☐ Sole Proprietorship ☐ Corporation ☐ Professional Corporation  
☐ General Partnership ☐ Limited Partnership ☐ Limited Liability Partnership  
☐ Limited Liability Company ☐ Professional Limited Liability Company  
☐ Other \_\_\_\_\_

Date Business Started: \_\_\_\_\_ State Where Started: \_\_\_\_\_

**If the entity was formed in another state, registration with the Texas Secretary of State may be required before transacting business in Texas. See [http://www.sos.state.tx.us/corp/foreign\\_outofstate.shtml](http://www.sos.state.tx.us/corp/foreign_outofstate.shtml)**

Publicly traded company ☐ No ☐ Yes – Where Traded: \_\_\_\_\_

**Depending on the type of business entity, the business will have owners, corporate officers, corporate directors, partners, managers, members, etc. Complete the information below -**

To provide information on more than one person or entity for boxes 1 to 5, please use back of page, blank page, or another copy of this form.

<b>1</b>	Name of Primary Officer, Partner, Owner, Manager, Member, Director	
<b>2</b>	Position or title with business entity	
<b>3</b>	Address ( <i>if different from above</i> )	
<b>4</b>	Who is authorized to execute contracts and other documents?	
<b>5</b>	What is the title or position of the person listed in #4?	
<b>6</b>	Please provide a document (resolution, bylaw, agreement, etc.) that states the person identified in #4 has authority to execute contracts or execute affidavit.	

**In signing this form, I acknowledge that I have read the above and state that the information contained therein is true and correct.**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Print Title: \_\_\_\_\_

## ESTABLISHING AUTHORITY TO EXECUTE CONTRACT

When an instrument is signed on behalf of a business entity, documentation must be submitted that states the person signing on behalf of the business entity has the authority to do so. That documentation may be in the form of a resolution approved by a corporate board of directors, charter provisions, by-laws, partnership agreement, etc.

If a business entity has a document authorizing one or more individuals to enter into contracts or execute any instrument in the name of the business entity that it may deem necessary for carrying on the business of the entity, a certified copy of that document may be submitted.

If the business has a document stating who can execute documents for the business (such as a corporate resolution, charter provision, corporate bylaw, etc), the certification below may be signed and that document attached to this page.

## CERTIFICATION REGARDING ATTACHED DOCUMENT

I, the undersigned person, as the *{title}* \_\_\_\_\_ of  
*{business entity}* \_\_\_\_\_, certify that the attached  
 document authorizes *[name of person]* \_\_\_\_\_ to execute  
 contracts and other documents on behalf of said business entity and said document has not been revoked,  
 altered, or amended and is still in full force and effect.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

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

\_\_\_\_\_  
 Print Name

**Attach Document to this Form**

If a corporation does not have a document authorizing someone to execute contracts on behalf of the corporation, this resolution form may be used to establish that authority.

## RESOLUTION FOR CORPORATION

BE IT RESOLVED by the Board of Directors of \_\_\_\_\_  
(Name of Corporation)

that \_\_\_\_\_ is hereby authorized to execute a contract with the  
(Name)

City of Waco to complete/construct \_\_\_\_\_  
(Name of Project, Project No.)

\_\_\_\_\_, Secretary is authorized to attest he signature binding the corporation.

(Corporate Seal)

\_\_\_\_\_  
Corporate Name

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

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

ATTEST:

\_\_\_\_\_  
Secretary of Corporation

## CERTIFICATION

I, \_\_\_\_\_, certify that the above resolution was  
(Secretary of Corporation)

adopted by the Board of Directors of \_\_\_\_\_  
(Corporation)

at a meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature of Secretary)

\_\_\_\_\_  
(Print Name of Secretary)

\_\_\_\_\_  
(Email Address)

If business entity has no document declaring who has authority to execute a contract on behalf of a business entity, this affidavit must be completed.

## AFFIDAVIT OF AUTHORITY TO SIGN FOR COMPANY, CORPORATION OR PARTNERSHIP

Name of Business Entity: \_\_\_\_\_

Which is: ☐ Corporation ☐ Professional Corporation ☐ General Partnership  
☐ Limited Partnership ☐ Limited Liability Partnership ☐ Limited Liability Company  
☐ Professional Limited Liability Company

On behalf of the above named business entity, I, the undersigned, certify and affirm that the following named person has authority to execute contracts and other documents on behalf of said business entity:

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

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

I declare under penalty of perjury that the above is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_.

(seal)

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



## INSTRUCTIONS FOR CONFLICTS OF INTEREST QUESTIONNAIRE [Form CIQ]

Chapter 176 of the Texas Local Government Code requires vendors who wish to conduct business or be considered for business with a city to file a “conflict of interest questionnaire.” The Texas Ethics Commission (TEC) created the conflict of interest questionnaire (Form CIQ).

### **Who must complete and filed CIQ form?**

Every vendor doing business with the City or seeking to do business with the City must complete Box 1 and sign and date in Box 7. Whether or not a conflict exists determines the other information to include on the form.

### **Who is a vendor?**

The term “vendor” includes a partnership, corporation or other legal entities, including those performing professional services. Partnerships or corporations act through individuals, but it is the partnership or corporation that is doing business with or seeking to do business with the City.

If the vendor seeking to do business with the City is a sole proprietorship, then just the name of the person who is the vendor is needed.

### **What triggers the requirement to file the Form CIQ?**

When a vendor (or an agent of the vendor) begins (1) contract discussions or negotiations with the city or (2) submits an application, quote, response to request for proposals or bids, or anything else that could result in an agreement (contract or purchase order) with the City, Form CIQ must be completed. Whether the vendor initiates the discussion or the City initiates the discussions, Form CIQ must be completed. The monetary amount or value of the contract/purchase does not matter. The contract or purchase may involve the sale or purchase of property, goods, or services with the City of Waco

### **When does a conflict requiring disclosure exist? What has to be revealed?**

- A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with the City of Waco and the vendor:
  - (1) has an employment or other business relationship with an officer of the City of Waco, or a family member of an officer, that results in taxable income exceeding **\$2,500** during the 12 month period preceding the date a contract/purchase is executed or a contract/purchase is being considered; or
  - (2) has given an officer of the City of Waco, or a family member of an officer, one or more gifts with the aggregate value of more than **\$100** in the 12 month period preceding the date a contract/purchase is executed or a contract/purchase is being considered
  - (3) has a family relationship with an officer of the City of Waco.

### **What family relationships create a conflict?**

A “family member” is a person related to another person within the first degree by consanguinity (blood) or affinity (marriage), as described by Subchapter B, Chapter 573, Texas Government Code. The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

“Family relationship” means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Texas Government Code.

**Who are officers of the City of Waco?**

Officers are the members of the Waco City Council, the City Manager, and any agent or employee who exercises discretion in the planning, recommending, selecting, or contracting with a vendor. An agent may include engineers and architects, as well as others, who assist the City is making a decision on some contract or purchase.

**When must a vendor file the conflict of interest questionnaire?**

No later than seven days after the date the vendor: (a) begins contract discussions or negotiations with the city, or (b) submits an application or response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with a city, or (c) becomes aware of an employment or other business relationship with an officer or family member of the officer that the vendor (i) has made one or more gifts of more than \$100 or (ii) has a family relationship with.

**How do I go about filling out the Conflict of Interest Questionnaire form?**

**Section 1:** Fill in the full name of the **person or company** who is trying to do business with the City. If the “person” is a corporation, partnership, etc., then it is the name of that corporation, partnership, etc., that is required on Form CIQ. If a sole proprietorship, then just the name of the individual is needed. If the “person” is an individual acting as an agent for some other person or a company, then it is the agent’s name. **Any time an agent is involved, two FORM CIQs must be completed and submitted:** one for the agent, and one for the person or company that the agent acted for. The agent’s FORM CIQ must note the vendor that the agent acted for.

**Section 2:** Check box if the form is an update to a form previously completed. Updates are required by the 7th business day after an event that makes a statement in a previously filed questionnaire incomplete or inaccurate. Updates are also required by September 1 of each year in which the person submits a proposal, bid or response to the City of Waco or begins contract discussions or negotiations with the City.

**Section 3:** Insert the name of the City of Waco officer with whom there is an affiliation to or business relationship. If there is more than one City officer with whom there is an affiliation or business relationship, a separate form should be completed for each officer.

**Section 4:** Check the “Yes” or “No” box in Section 4 A or B.

4.A: State whether the officer named on the form receives or is likely to receive taxable income, other than investment income, from the vendor filing the questionnaire.

4.B: State whether the vendor receives or is likely to receive taxable income, other than investment income, from or at the direction of the officer named on the form AND the taxable income is not received from the City.

**Section 5:** Describe each employment or business relationship with the local government officer named on the form.

**Section 6:** Check box to acknowledge gifts made that require disclosure.

**Section 7.** Person completing form must date and sign the form. If the form is being completed for a corporation, partnerships, etc., the person signing should be someone who is authorized to act on behalf of the corporation, partnership, etc.

**A signature is required in box #4 regardless of any other entry on the form. A copy of**

**Chapter 176 of the Texas Local Government Code can be found at:**

**<http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.176.htm>**

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

## FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

### OFFICE USE ONLY

Date Received

This includes the vendor name even if a conflict does not exist

**1 Name of vendor who has a business relationship with local governmental entity.**

Insert name of vendor seeking to do business with the City of Waco

**2** Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

Insert name of officer with whom there is business, employment or family relationship. If no conflict, insert N/A.

Name of Officer

**4** Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

Complete A-B if a conflict exist

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

**5** Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

Identify and describe the relationship, if applicable

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7** Signature required -- so sign and date, even if no conflict

Signature of vendor doing business with the governmental entity \_\_\_\_\_ Date \_\_\_\_\_

## CONFLICT OF INTEREST QUESTIONNAIRE

### For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;  
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.



**CONFLICT OF INTEREST QUESTIONNAIRE****FORM CIQ****For vendor doing business with local governmental entity****This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2** Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4** Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

**5** Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date



## DISCLOSURE OF RELATIONS WITH CITY COUNCIL MEMBER, OFFICER, OR EMPLOYEE OF CITY OF WACO

Failure to fully and truthfully disclose the information required by this form may result in the termination of any business the City is now doing with the entity listed below and/or could impact future dealings.

**1. Name of Entity/Business/Person doing business with City:** \_\_\_\_\_

Is the above entity: **(Check one)**

- ☐ A corporation
 ☐ A partnership
 ☐ A sole proprietorship or an individual
 ☐ Other (specify): \_\_\_\_\_

**Check all applicable boxes.**

**2. Is any person involved as an owner, principal, or manager of name listed in #1 related to or financially dependent on Council member, officer, or employee of the City of Waco?**

- ☐ NO -- there is no such relationship between Entity/Business/Person and the City of Waco.  
☐ YES, a person who is a/an ☐ owner, ☐ principal, or ☐ manager of this entity/business/person

is: **(Check all applicable boxes below)**

- ☐ related to by blood or marriage\* and/or ☐ a member of the same household as  
 and/or ☐ financially dependent upon\*\* and/or ☐ financially supporting\*\*  
 to a City of Waco ☐ City Council member, ☐ officer or ☐ employee.

\* As used here, "related to" means a spouse, child or child's spouse, and parent or parent's spouse. It also includes a former spouse if a child of that marriage is living (the marriage is considered to continue as long as a child of that marriage lives).

\*\* As used herein, "financially dependent upon" and "financially supporting" refers to situations in which monetary assistance—including for lodging, food, education, and debt payments—is provided by owner, principal or manager of #1 to Council member, officer or employee of City of Waco, or that Council member, officer or employee of City of Waco provides to owner, principal or manager of #1.

If YES, provide (a) the name of owner, principal, or manager, **and** (b) the name of the City Council member, officer or employee (include the department the City officer or employee works for, if known), **and** (c) if a relationship by marriage or by blood/kinship exists. (Use back of sheet if more space is needed)

(a) Name of owner, principal, or manager	(b) Name of Council member, officer or employee & department	(c) What is relationship or household arrangement

**3. Is a current City Council member or City employee involved with the name listed in #1 as an owner, principal, manager, or employee, or employed as a contractor for name listed in #1?**

- ☐ NO (no person involved/working for Entity/Business/Person is Council member, officer or employee of the City).  
☐ YES, a person is **(Check all applicable boxes)**

- (a) a current City of Waco ☐ City Council member, ☐ officer or ☐ employee,  
 (b) and is ☐ an owner, ☐ a principal, or ☐ a manager of the entity/business/person listed in #1,  
 or ☐ an employee or ☐ an independent contractor of the entity/business/person listed in #1.

If YES, provide the name of owner, principal, manager, employee or independent contractor who is a City Council member, officer or employee. Include the department the City officer or employee works for, if known.

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

Signature: \_\_\_\_\_ Phone #: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Print Title: \_\_\_\_\_



**CITY OF WACO  
PURCHASING  
MINORITY / WOMEN OWNED BUSINESS CERTIFICATION**

The City of Waco is committed to assuring that all businesses are given prompt, courteous, and equal opportunity to provide goods and services to the City. To achieve this goal, the City Council requests the minority women owned status of each vendor on the City vendor list.

**Definition:** A Disadvantaged Minority and Woman owned Business Enterprise means a business concern owned and controlled by socially and economically disadvantaged individuals. This means any business concern that (a) is at least 51% owned by one or more socially and economically disadvantaged individuals; or in the case of publicly owned businesses, at least 51% of the stock which is owned by one or more socially or economically disadvantaged individuals; and (b) whose management and daily operations are controlled by one or more other socially and economically disadvantaged individuals who own it. The groups included in this program are Black Americans, Hispanic Americans, Women, Asian Pacific Americans, Service Disabled Veterans, and Native Americans

**Certification: Bidder declares a minority and/or women owned business status:**

\_\_\_\_\_ YES                  \_\_\_\_\_ NO

**If yes, check one of the blocks (indicate male or female):**

**Black M/F\_\_\_\_\_;    Hispanic M/F\_\_\_\_\_;    Woman\_\_\_\_\_;    Asian M/F\_\_\_\_\_;**

**Native American M/F\_\_\_\_\_;    Service Disabled Veteran of 20% or more M/F\_\_\_\_\_.**

**HUB certified \_\_\_\_\_ YES                  \_\_\_\_\_ NO**

COMPANY NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



## LITIGATION DISCLOSURE

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

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

☐

Yes

☐

No

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of Waco or any other Federal, State or Local Government, or Private Entity?

☐

Yes

☐

No

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of Waco or any other Federal, State or Local Government, or a Private Entity during the last ten (10) years?

☐

Yes

☐

No

**If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your bid/proposal/qualifications.**



**INSTRUCTIONS FOR CERTIFICATION REGARDING**  
**Certification Regarding Debarment, Suspension, Ineligibility, and**  
**Voluntary Exclusion**

1. By signing and submitting this proposal and the certification form, the prospective lower tier participant (BIDDER/PROPOSER/SUBRECIPIENT) is providing the certification set out on the following form (or reverse side) in accordance with these instructions.
2. The certifications in this clause are a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant (BIDDER/PROPOSER/ SUBRECIPIENT) knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant (BIDDER/PROPOSER/SUBRECIPIENT) shall provide immediate written notice to the person to whom this bid/proposal is submitted if at any time the prospective lower tier participant (BIDDER/PROPOSER/SUBRECIPIENT) learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant (BIDDER/PROPOSER/SUBRECIPIENT) agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant (BIDDER/PROPOSER/SUBRECIPIENT) further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the No procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Purchasing Department**

Post Office Box 2570  
 Waco, Texas 76702-2570  
 254 / 750-8060  
 Fax: 254 / 750-8063  
[www.waco-texas.com](http://www.waco-texas.com)

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY,  
 AND VOLUNTARY EXCLUSION**

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

Location: \_\_\_\_\_

RFB/RFP #: \_\_\_\_\_

This certification is required (or may be required) by the federal regulations implementing Executive Order 12549, Debarment and Suspension. The regulations were published as Part VII of the May 26, 1988, *Federal Register* (pages 19160-19211). For further assistance in obtaining a copy of the regulations, contact the City of Waco Purchasing Department.

**READ INSTRUCTIONS BEFORE COMPLETING CERTIFICATION**

- (1) The prospective lower tier participant (BIDDER/PROPOSER/SUBRECIPIENT) certifies, by submission of this proposal that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State department or agency.
- (2) Where the prospective lower tier participant (BIDDER/PROPOSER/SUBRECIPIENT) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
 Company

\_\_\_\_\_  
 Name and Title of Authorized Representative

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

**STATE OF TEXAS** §  
**COUNTY OF \_\_\_\_\_** §

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## **RESIDENT CERTIFICATION**

Chapter 2252 of the Texas Government Code “CONTRACTS WITH GOVERNMENTAL ENTITY, SUBCHAPTER A. NONRESIDENT BIDDERS”:

In accordance with Chapter 2252 of the Texas Government Code, a governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident’s principle place of business is located.

- (1) "Government contract" means a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.
- (2) "Governmental entity" means a municipality, county, public school district, or special-purpose district or authority.
- (3) “Nonresident bidder” refers to a person who is not a resident.
- (4) “Resident bidder” refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

I certify that as defined in Texas Government Code, Chapter 2252 that:

☐ Yes, I am a Texas Resident bidder

☐ No, I am not a Texas Resident bidder

COMPANY NAME: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**PLEASE SIGN AND RETURN WITH BID**





## TEXAS PUBLIC INFORMATION ACT

### Steps To Assert Information Confidential or Proprietary

All proposals, data, and information submitted to the City of Waco are subject to release under the Texas Public Information Act ("Act") unless exempt from release under the Act. You are not encouraged to submit data and/or information that you consider to be confidential or proprietary unless it is absolutely required to understand and evaluate your submission.

On each page where confidential or proprietary information appears, you must label the confidential or proprietary information. Do not label every page of your submission as confidential as there are pages (such as the certification forms and **bid sheet with pricing**) that are **not confidential**. It is recommended that each page that contains either confidential or proprietary information be printed on colored paper (such as yellow or pink paper). At a minimum the pages where the confidential information appears should be labeled and the information you consider confidential or proprietary clearly marked.

Failure to label the actual pages on which information considered confidential appears will be considered as a waiver of confidential or proprietary rights in the information.

In the event a request for public information is filed with the City which involves your submission, you will be notified by the City of the request so that you have an opportunity to present your reasons for claims of confidentiality to the Texas Attorney General.

**In signing this form, I acknowledge that I have read the above and further state:**

☐ The proposal/bid submitted to the City **contains NO confidential information** and may be released to the public if required under the Texas Public Information Act.

☐ The proposal/bid submitted **contains confidential information** which is labeled and which may be found on the following pages: \_\_\_\_\_

and any information contained on page numbers not listed above may be released to the public if required under the Texas Public Information Act.

Vendor/Proposer Submitting: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Print Title: \_\_\_\_\_

**PLEASE SIGN AND RETURN WITH PROPOSAL/BID**

Revised 10/15/2012

**DRUG-FREE WORKPLACE ACT CERTIFICATION**

1. Contractor certifies that he/she will provide a drug-free workplace by:
  - (a) publishing a statement notifying employees that unlawfully manufacturing, distributing, dispensing, possessing or using a controlled substance in Contractor's workplace is prohibited and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) establishing a drug-free awareness program to inform employees about:
    - (1) the dangers of drug abuse in the workplace;
    - (2) Contractor's policy of maintaining a drug-free workplace;
    - (3) any drug counseling, rehabilitation, and employee assistance programs that are available; and
    - (4) penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (c) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (a);
  - (d) notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the contract the employee will:
    - (1) abide by the terms of the statement; and
    - (2) notify City of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such a conviction;
  - (e) notifying City within ten (10) days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
  - (f) taking one of the following actions within thirty (30) days of receiving notice under subparagraph (d)(2) with respect to any employee so convicted:
    - (1) taking appropriate personnel action against such an employee, up to and including termination; or
    - (2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
  - (g) making a good faith effort to continue to maintain a drug-free workplace through implementation of the above paragraphs.
2. Contractor's headquarters is located at the following address. The addresses of all other workplaces maintained by Contractor, if any, are provided on an accompanying list.

Name of Contractor: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_

County: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**SIGNED BY:** \_\_\_\_\_

**Print Name & Title:** \_\_\_\_\_

**Date Signed:** \_\_\_\_\_

# APPENDIX D

## Specifications

- (1) Project Manual (2) (Separate Files)
- (2) Drawing/Plans (Separate File)

In addition to the attached Specification and/or Drawings, the “City of Waco Standard Specifications for Construction” dated January 2013 is incorporated herein by reference for all intents and purposes. If a standard specified in the City of Waco Standard Specifications conflicts with a standard included within an attached specification and/or drawing, the attached specification and/or drawing controls. If the standard is unclear, the Director of Public Works for the City of Waco will determine which standard controls and his determination shall be final.

A copy of “City of Waco Standard Specifications for Construction” and the City of Waco Standard Details may be obtained by contacting the Public Works Department for the City of Waco at 254-750-5440 or by accessing the City of Waco website at [www.waco-texas.com](http://www.waco-texas.com) and going to Bid Opportunities – Engineering Services (Public Works).