

**DALLAS-FORT WORTH  
INTERNATIONAL AIRPORT**

**ADDENDUM NO. 1**

**Terminal D North Expansion – Construction Manager-At-Risk (CMAR)**

**CONTRACT NO. 9500647**

**August 8, 2018**

The Request for Bids for the above is hereby revised as follows:

This Addendum No.1 contains the following addition to the RFP:

**Appendix 4 – The Contract**

- 1.** CM@R Contract;
- 2.** General Conditions;
- 3.** Exhibit 1; Mandatory Federal Provisions;
- 4.** Exhibit 2; Supplemental Provisions; and
- 5.** Exhibit 3; Insurance and Bonding Requirements.

<End of Addendum No. 1>

# DRAFT AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

« »  
« »

### OWNER:

(Name, legal status and address)

Dallas/Fort Worth International Airport Board»  
«2400 Aviation Drive  
P.O. Box 619428  
Dallas/Fort Worth International Airport  
DFW Airport, Texas 75261

### ARCHITECT:

(Name, legal status and address)

« »« »  
« »

### CONSTRUCTION MANAGER:

(Name, legal status and address)

« »« »  
« »

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

See Exhibit 2; Supplemental Provisions.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for construction. The Contract may be amended or modified only by a Modification. The Contract Documents may not be construed to create a contractual relationship of any kind (1) between Construction Manager and Architect or Architect's consultants, (2) between Owner and a Subconsultant/Subcontractor, (3) between Owner and Architect or Architect's consultants or (4) between any Persons other than Owner and Construction Manager. Architect will, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of 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 Construction Manager to fulfill Construction Manager'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 Owner and by separate contractors.

### 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.

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### **§ 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 Architect and 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 Omitted.**

## **§ 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 Construction Manager. The Contract Documents are complementary, and what is required by one will be as binding as if required by all; performance by Construction Manager will be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings will not control Construction Manager in dividing the Work among Subconsultants/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 Omitted.**

## **§ 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 DOCUMENTS**

**§ 1.5.1** Construction Manager, Subconsultants/Subcontractors and material or equipment suppliers may not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes regarding this Project is not to be construed as publication in derogation of Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** Construction Manager, Subconsultants/Subcontractors material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization must bear the copyright notice, if any, shown on the Instruments of Service. Construction Manager, Subconsultants/Subcontractors and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner, Architect and Architect's consultants.

## **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

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

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** Owner is the Person identified as such in the Contract and is referred to throughout the Contract Documents

as if singular in number. Owner will designate in writing a representative who will serve as primary interface and the single-point of communication for Owner under this Agreement; and have Day-to-Day responsibility to address issues relating to the Agreement Documents. The term “Owner” means Owner or Owner’s authorized representative.

§ 2.1.2 Omitted.

## § 2.2 INFORMATION AND SERVICES REQUIRED OF OWNER

§ 2.2.1 Omitted.

§ 2.2.2 Owner waives any construction permit fees that may be applicable to Construction Manager under any applicable Owner rates and charges.

§ 2.2.3 Owner may furnish surveys describing physical characteristics and utility locations for the site of the Project, and a legal description of the site. Construction Manager must exercise proper precautions relating to the safe performance of the Work.

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, Owner will furnish to Construction Manager one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

## § 2.3 OWNER’S RIGHT TO STOP THE WORK

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

## § 2.4 OWNER’S RIGHT TO CARRY OUT THE WORK

If Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-Day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies. In such case: [i] an appropriate Amendment/Change Order may be issued deducting from payments then or thereafter due Construction Manager the reasonable cost of correcting such deficiencies, including Owner’s expenses and compensation for Architect’s additional services made necessary by such default, neglect or failure; and/or [ii] Owner may utilize any other method of accounting for the credit due to Owner as a result of correcting Construction Manager’s deficient Work, including keeping a running accounting record and executing a deductive Amendment/Change Order at Final Completion, subject to any requirement that Owner’s Board legislatively approve such Change Order. If payments then or thereafter due Construction Manager or monies left in the Contract are not sufficient to cover such amounts, Construction Manager must pay the difference to Owner within 7 Days of its receipt of Owner’s invoice.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 Construction Manager is the Person identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. Construction Manager must be lawfully licensed, if required in the jurisdiction where the Project is located. Construction Manager must designate in writing a representative who must have express authority to bind Construction Manager with respect to all matters under this Contract. The term “Construction Manager” means Construction Manager or Construction Manager’s authorized representative.

§ 3.1.2 Construction Manager must perform the Work in accordance with the Contract Documents.

§ 3.1.3 Construction Manager will not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of Owner/Architect in Owner’s/Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by Persons other than Construction Manager.

## **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

**§ 3.2.2** Because the Contract Documents are complementary, Construction Manager must, 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 Owner pursuant to Section 2.2.3, must take field measurements of any existing conditions related to that portion of the Work, and must observe any conditions at the site affecting it. These obligations are to facilitating coordination and construction by Construction Manager. Construction Manager must promptly report to Architect/Owner any errors, inconsistencies or omissions in the Contract Documents discovered by or made known to Construction Manager as a request for information in such form as Architect/Owner may require.

**§ 3.2.3** Construction Manager must promptly report to Architect/Owner any nonconformity discovered by or made known to Construction Manager as a request for information in such form as Architect/Owner may require.

**§ 3.2.4** If Construction Manager believes that additional cost or time is involved because of clarifications or instructions Owner/Architect issues in response to Construction Manager's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, Construction Manager must make Claims as provided in Article 15. If Construction Manager fails to perform the obligations of Sections 3.2.2 or 3.2.3, Construction Manager must pay such costs and damages to Owner as would have been avoided if Construction Manager had performed such obligations.

## **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** Construction Manager must supervise and direct the Work, using Construction Manager's best skill and attention. Construction Manager will be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Construction Manager must evaluate the jobsite safety thereof and, except as stated below, will be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If Construction Manager determines that such means, methods, techniques, sequences or procedures may not be safe, Construction Manager must give timely written notice to Owner/Architect and may not proceed with that portion of the Work without further written instructions from Owner.

**§ 3.3.2** Construction Manager will be responsible to Owner for acts and omissions of Construction Manager's employees, Subconsultants/Subcontractors and their agents and employees, and other Persons performing portions of the Work for, or on behalf of, Construction Manager or any of its Subconsultants/Subcontractors.

**§ 3.3.3** Construction Manager must inspect portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

## **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, Construction Manager must 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 if incorporated or to be incorporated in the Work.

**§ 3.4.2** Construction Manager may make substitutions only with the consent of Owner and in accordance with an Amendment/Change Order or Construction Change Directive.

**§ 3.4.3** Construction Manager must enforce strict discipline and good order among Construction Manager's employees and other Persons carrying out the Work. Construction Manager must not permit employment of unfit Persons or Persons not properly skilled in tasks assigned to them.

## **§ 3.5 WARRANTY**

Construction Manager warrants to 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. Construction Manager further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective.

Construction Manager's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by Owner/Architect, Construction Manager must furnish satisfactory evidence as to the kind and quality of materials and equipment.

### § 3.6 TAXES

Owner qualifies for exemption from certain state and local sales and use taxes pursuant to applicable laws. Construction Manager may claim exemption under this Contract from payment of certain applicable state taxes by complying with procedures prescribed by the State Comptroller of Public Accounts. It is Construction Manager's obligation to evaluate and utilize available procedures for gaining tax-exempt status for any portion of its Work. Owner is not obligated to compensate Construction Manager for taxes paid on items that qualify for tax exemption.

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, Construction Manager must 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 Construction Manager must 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 Construction Manager performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, Construction Manager must assume appropriate responsibility for such Work and must bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If Construction Manager encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, Construction Manager must promptly provide notice to Owner and Architect before conditions are disturbed and in no event later than 3 Days after first observance of the conditions. Owner will promptly investigate such conditions and, if Owner determines that they differ materially and cause an increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, may consider an equitable adjustment in the Compensation or Contract Time, or both. If Owner 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, Owner will promptly notify Construction Manager in writing, stating the reasons. If Construction Manager disputes Owner's determination, it may proceed as provided in Article 15.

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

§ 3.8 **ALLOWANCES.** Allowances applicable to this Contract will be addressed in the GMP Amendment or appropriate CGMP Amendments, if the Project is constructed in Components.

§ 3.8.1 Omitted.

§ 3.8.2 Omitted.

§ 3.8.3 Omitted.

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** Construction Manager must employ a competent superintendent and necessary assistants who must attend the Project site during performance of the Work. The superintendent must represent Construction Manager, and communications given to the superintendent will be as binding as if given to Construction Manager.

**§ 3.9.2** Construction Manager, as soon as practicable after award of the Contract, must furnish in writing to Owner the name and qualifications of a proposed superintendent. Owner may reply within 14 Days to Construction Manager in writing stating (1) whether Owner has reasonable objection to the proposed superintendent or (2) that Owner requires additional time to review. Failure of Owner to reply within the 14 Day period will not constitute acceptance.

**§ 3.9.3** Construction Manager may not employ a proposed superintendent to whom Owner has made reasonable and timely objection. Construction Manager may not change the superintendent without Owner's consent, which will not unreasonably be withheld or delayed.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** Construction Manager, in accordance with the Contract Documents or as otherwise directed by Owner, must prepare and submit for Owner's and Architect's information a Construction Manager's construction schedule for the Work. The schedule must not exceed time limits current under the Contract Documents, must be revised at appropriate intervals as required by the conditions of the Work and Project, must be related to the entire Project to the extent required by the Contract Documents, and must provide for expeditious and practicable execution of the Work.

**§ 3.10.2** Construction Manager, in accordance with the Contract Documents or as otherwise directed by Owner, must prepare a submittal schedule, and update it thereafter as necessary to maintain a current submittal schedule, and must submit the schedule(s) for Owner's approval. Owner's approval will not unreasonably be delayed or withheld. The submittal schedule must (1) be coordinated with Construction Manager's construction schedule, and (2) allow a reasonable time to review submittals. If Construction Manager fails to submit a submittal schedule, Construction Manager will not be entitled to any increase in Compensation or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** Construction Manager must perform the Work in general accordance with the most recent schedules submitted to Owner and Architect.

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

Construction Manager must maintain at the site for Owner one copy of the Drawings, Specifications, Addenda, Amendments/Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These must be available to Owner/Architect and must be delivered to 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 Construction Manager or a Subconsultant/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 Construction Manager to illustrate materials or equipment for some portion of the Work.

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

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which Construction Manager 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 Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which 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 Architect without action.

§ 3.12.5 Construction Manager must review for compliance with the Contract Documents, approve and submit to Owner/Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by Owner/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 Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, Construction Manager represents to Owner and Architect that Construction Manager has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so 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 Construction Manager must 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 Owner/Architect.

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

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

#### § 3.12.10

- 1) Construction Manager will 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 Construction Manager needs to provide such services to carry out Construction Manager's responsibilities for construction means, methods, techniques, sequences and procedures. Construction Manager will not be required to provide professional services in violation of applicable law.
- 2) If Construction Manager is required to provide professional services that constitute the practice of architecture or engineering, it will do so strictly in accordance with Texas Government Code Chapter 2254; Professional and Consulting Services; Subchapter A; Professional Services. When Construction Manager seeks payment of the Cost of the Work related to such professional services, it must certify in its Application for Payment that it complied with Texas Government Code Chapter 2254; Professional and Consulting Services; Subchapter A; Professional Services in retaining those services.
- 3) If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Construction Manager by the Contract Documents, Owner and Architect will specify all performance and design criteria that such services must satisfy. Construction Manager must cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal must 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, must bear such professional's written approval when submitted to Owner/Architect. Owner and Architect will be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided Owner and Architect have specified to Construction Manager all performance and design criteria that such services must satisfy.



- 4) Pursuant to this Section 3.12.10, Owner/Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Construction Manager will not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

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

### **§ 3.14 CUTTING AND PATCHING**

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

**§ 3.14.2** Construction Manager must not damage or endanger a portion of the Work or fully or partially completed construction of Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Construction Manager must not cut or otherwise alter such construction by Owner or a separate contractor except with written consent of Owner and of such separate contractor; such consent will not be unreasonably withheld. Construction Manager may not unreasonably withhold from Owner or a separate contractor Construction Manager's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

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

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

### **§ 3.16 ACCESS TO WORK**

Construction Manager must provide Owner and Architect access to the Work in preparation and progress wherever located.

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

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

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW CONSTRUCTION MANAGER MUST INDEMNIFY AND HOLD HARMLESS OWNER, THE CITIES OF DALLAS AND FORT WORTH, TEXAS, 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 CONSTRUCTION MANAGER, A SUBCONSULTANT/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 WILL 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.**

**§ 3.18.2 IN CLAIMS AGAINST ANY PERSON INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF CONSTRUCTION MANAGER, A SUBCONSULTANT/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 WILL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONSTRUCTION MANAGER OR A SUBCONSULTANT/SUBCONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.**

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** Owner will retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That Person is identified as Architect in the Contract and is referred to throughout the Contract Documents as if singular in number.

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

**§ 4.1.3** If the employment of Architect is terminated, Owner will employ a successor architect whose status under the Contract Documents will be that of Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** At Owner's discretion, Architect may provide certain administrative tasks for the Contract. Owner may also designate other individuals to act as its representative under the Contract, including those working for various consultants involved in the Project.

**§ 4.2.2** Architect may visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with 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. 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 regarding the Work, since these are solely Construction Manager's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, Architect will keep Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by Construction Manager, and (2) defects and deficiencies observed in the Work.

**§ 4.2.4** Omitted.

**§ 4.2.5** Omitted.

**§ 4.2.6** Architect has authority to reject Work that does not conform to the Contract Documents. Whenever Architect considers it necessary or advisable, Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

**§ 4.2.7** Architect will review and approve, or take other appropriate action upon, Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Architect's action will be taken in accordance with the submittal schedule approved by Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for 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 Construction Manager as required by the Contract Documents. Architect's review of Construction Manager's submittals will not relieve Construction Manager of the obligations under Sections 3.3, 3.5 and 3.12. Architect's review will not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences or procedures. Architect's approval of a specific item will not indicate approval of an assembly of which the item is a component.

§ 4.2.8 Architect, at the direction of Owner, may prepare Amendments/Change Orders and Construction Change Directives. Architect may investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 Architect may 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; and receive and forward to Owner, for Owner's review and records, written warranties and related documents required by the Contract and assembled by Construction Manager pursuant to Section 9.10.

§ 4.2.10 Omitted.

§ 4.2.11 Architect may interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either Owner or Construction Manager. 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 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, Architect will endeavor to secure faithful performance by both Owner and Construction Manager, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 Omitted.

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

## ARTICLE 5 SUBCONSULTANT/SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 The term "Subconsultant/Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subconsultant/Subcontractor or an authorized representative of the Subconsultant/Subcontractor.

§ 5.1.2 Omitted.

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, Construction Manager, as soon as practicable after award of the Contract, must furnish in writing to Owner, at the Owner's request, the names of Persons (including those who are to furnish materials or equipment fabricated to a special design) for each principal portion of the Work. Owner may reply within 14 Days to Construction Manager in writing stating (1) whether Owner has reasonable objection to any such proposed Person or (2) that Owner requires additional time for review. Failure of Owner to reply within the 14-Day period will not constitute notice of acceptance.

§ 5.2.2 Construction Manager may not contract with a proposed Person to whom Owner has made reasonable and timely objection.

§ 5.2.3 If Owner has reasonable objection to a Person proposed by Construction Manager, Construction Manager must propose another to whom Owner has no reasonable objection. If the proposed but rejected Subconsultant/Subcontractor was reasonably capable of performing the Work, the Compensation and Contract Time may be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Amendment/Change Order may be issued before commencement of the substitute Subconsultant's/Subcontractor's Work. However, no increase in the Compensation or Contract Time will be allowed for such change unless Construction Manager has acted promptly and responsively in submitting names as required.

§ 5.2.4 Construction Manager may not substitute a Subconsultant/Subcontractor, Person previously selected if Owner makes reasonable objection to such substitution.

### § 5.3 SUBCONTRACT RELATIONS

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

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

- § 5.4.1 Each Subcontract for a portion of the Work is assigned by Construction Manager to Owner, provided that
- .1 assignment is effective only after termination of the Contract by Owner for cause pursuant to Section 14.2 and only for those Subcontracts that Owner accepts by notifying the Subconsultant/Subcontractor and Construction Manager in writing; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When Owner accepts the assignment of a Subcontract, Owner assumes Construction Manager's rights and obligations under the Subcontract existing as of the effective date of the assignment.

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

## 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 Owner reserves the right to perform construction or operations related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on or in the vicinity of the site. If Construction Manager claims that delay or additional cost is involved because of such action by Owner, Construction Manager must make such Claim as provided in Article 15.

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

§ 6.1.3 Owner will provide for coordination of the activities of Owner's own forces and of each separate contractor with the Work of Construction Manager, who must cooperate with them. Construction Manager must participate with other separate contractors and Owner in reviewing their construction schedules. Construction Manager must make any revisions to the construction schedule deemed necessary after a joint review and agreement. The construction schedules will then constitute the schedules to be used by Construction Manager, separate contractors and Owner until subsequently revised.

### § 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of Construction Manager's Work depends for proper execution or results upon construction or operations by Owner or a separate contractor, Construction Manager must, prior to proceeding with that portion of the Work, promptly report to Owner/Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Construction Manager to report will constitute an acknowledgment that Owner's or separate contractor's completed or partially completed construction is fit and proper to receive Construction Manager's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 Construction Manager must reimburse Owner for costs Owner incurs that are payable to a separate contractor because of Construction Manager's delays, improperly timed activities or defective construction.

§ 6.2.4 Construction Manager must promptly remedy damage at its own cost, Construction Manager wrongfully causes to completed or partially completed construction or to property of Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 Owner and each separate Construction Manager will have the same responsibilities for cutting and patching as are described for Construction Manager in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among Construction Manager, separate contractors and Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Owner may clean up and Owner 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 Amendment/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 An Amendment/Change Order will be based upon agreement between Owner and Construction Manager; a Construction Change Directive requires agreement by Owner and may or may not be agreed to by Construction Manager.

§ 7.1.3 Changes in the Work will be performed under applicable provisions of the Contract Documents, and Construction Manager must proceed promptly, unless otherwise provided in the Amendment/Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

§ 7.2.1 An Amendment/Change Order is a written instrument signed by Owner's Representative of its Procurement and Materials Management Department or a person to whom he/she may delegate and Construction Manager stating their agreement upon all the following:

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

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by Owner and signed by Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Compensation or Contract Time, or both. 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 Compensation and Contract Time being adjusted accordingly. Owner's Representative of its Procurement and Materials Management Department or a person to whom he/she may delegate are authorized to issue Construction Change Directives.

§ 7.3.2 A Construction Change Directive may 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 Compensation, the adjustment must be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 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 7.3.7.

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

§ 7.3.5 Upon receipt of a Construction Change Directive, Construction Manager must promptly proceed with the change in the Work involved and advise Owner of Construction Manager's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Compensation or Contract Time.

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

§ 7.3.7 If Construction Manager does not respond promptly or disagrees with the method for adjustment in the Compensation, Owner will determine the method and 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 Compensation, In such case, and also under Section 7.3.3.3, Construction Manager must keep and present, in such form as Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 will be limited to the following:

- .1 Approved labor burden;
- .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 Construction Manager or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by Construction Manager to Owner for a deletion or change that results in a net decrease in the Compensation will be actual net cost as confirmed by Owner.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to Owner, Construction Manager may request payment for Work completed under the Construction Change Directive in Applications for Payment. Owner will make an interim determination for purposes of payment for those costs in an amount that Owner determines to be reasonably justified. Owner's interim determination of cost will adjust the Compensation on the same basis as an Amendment/Change Order, subject to Construction Manager's right to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Omitted.

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time are the periods, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of all or any portion of the Work. If a GMP Amendment is used, it may establish one date for Substantial Completion and one date for Final Completion. If CGMP Amendments are

used, each one may establish one date for Substantial Completion and one date for Final Completion for the Component Work included in it.

§ 8.1.2 The date of commencement of the Construction Phase is the date established in the Contract.

§ 8.1.3 Substantial Completion dates are the dates certified by Owner/Architect in accordance with Section 9.8.

§ 8.1.4 Omitted.

## § 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 Contract Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 Omitted

§ 8.2.3 Construction Manager must proceed expeditiously with adequate forces and must achieve Substantial Completion within the Contract Time and by any established Substantial Completion date.

## § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If Construction Manager is delayed at any time in the commencement or progress of the Work by an act or neglect of Owner or Architect, or of an employee of either, or of a separate contractor employed by Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond Construction Manager's control; or by delay authorized by Owner pending mediation; or by other causes that Owner determines may justify delay, then the Contract Time may be extended by Amendment/Change Order for such reasonable time as Owner/Architect may determine.

§ 8.3.2 Claims relating to time must 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.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 COMPENSATION

Compensation ("Compensation") payable to Construction Manager is set forth in the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, Construction Manager must submit to Owner, before the first Application for Payment, a schedule of values allocating the entire Compensation to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as Owner may require. This schedule, unless objected to by Owner, will be used as a basis for reviewing Construction Manager's Applications for Payment. Because the Work may be performed under a GMP Amendment or numerous CGMP Amendments, more than one schedule of values may be required by Owner (e.g. a schedule of values for Component Work under CGMP Amendment No. 1 and CGMP Amendment No. 2).

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 On or before the 15<sup>th</sup> Day of each month, Construction Manager must submit to Owner 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 during the prior month. Such application must be supported by such data substantiating Construction Manager's right to payment as Owner may require, such as copies of requisitions from Subconsultants/Subcontractors and material suppliers, and must 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 because of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of Owner, but not yet included in Amendments/Change Orders.

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments will be made because materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by 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 will be conditioned upon compliance by Construction Manager with procedures satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest, and must include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 Construction Manager warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. Construction Manager further warrants that upon submittal of an Application for Payment all Work for which Applications for Payment have been previously submitted and payments received from Owner will, to the best of Construction Manager's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Construction Manager, Subconsultants/Subcontractors, material suppliers, or other Persons making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Omitted.

### § 9.5 DECISIONS TO WITHHOLD PAYMENT

§ 9.5.1 Owner may withhold payment under an Application for Payment, in whole or in part, to the extent reasonably necessary to protect Owner. If payment cannot be made in the amount of the Pay Application, Owner will notify Construction Manager in writing as to the reasons for withholding payment in whole or in part. If the parties cannot agree on a revised amount, Owner will issue payment to Construction Manager in the amount for which Owner deems appropriate. Owner may also withhold a payment, in whole or in part, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously paid, to such extent as may be necessary in Owner's opinion to protect Owner from loss for which Construction Manager 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 Owner is provided by Construction Manager;
- .3 failure of Construction Manager to make payments properly to Subconsultants/Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Compensation;
- .5 damage to 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;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 damages caused to another contractor;
- .9 Construction Manager's or a related party's breach of any other contract with Owner; or
- .10 any other reason allowed by applicable laws.
- .11 written request from the Construction Manager's surety

§ 9.5.2 When the above reasons for withholding certification are removed, payment may be made for amounts previously withheld.

### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 Owner will make payments to Construction Manager for approved Pay Applications, in whole or in part, in accordance with the Texas Prompt Pay Act.

§ 9.6.2 Construction Manager must pay each Subconsultant/Subcontractor in accordance with the Texas Prompt Pay Act. Construction Manager must, by appropriate agreement with each Subconsultant/Subcontractor, require each Subconsultant/Subcontractor to make payments to its Subconsultants/Subcontractors in accordance with the Texas Prompt Pay Act.

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



§ 9.6.4 Owner has the right to request written evidence from Construction Manager that Construction Manager has properly paid Subconsultants/Subcontractors and material and equipment suppliers amounts paid by Owner to Construction Manager for subcontracted Work. If Construction Manager fails to furnish such evidence within seven Days, Owner will have the right to contact Subconsultants/Subcontractors to ascertain whether they have been properly paid. Owner will not have an obligation to pay or to see to the payment of money to a Subconsultant/Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Construction Manager payments to material and equipment suppliers will be treated in a manner like that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.7 Omitted.

## § 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 Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When Construction Manager considers that the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, Construction Manager must prepare and submit to Architect and Owner 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 Construction Manager to complete all Work in accordance with the Contract Documents.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, Architect or Owner will prepare a Certificate of Substantial Completion that will establish the date of Substantial Completion and will fix the time within which Construction Manager must finish all items on the list accompanying the Certificate.

§ 9.8.5 If the Project is constructed pursuant to a GMP Amendment, the Project will have one Substantial Completion date. That date will be used for the commencement of warranties and the calculation of statutes of limitations or repose concerning the Project, as well as any other determinations that are to be made based on the date of Substantial Completion.

§ 9.8.6 If the Project is constructed in Components, Owner will determine whether and to what extent Work Components will have corresponding Substantial Completion dates. Owner may determine that some Components do not need a Substantial Completion date while others do. The Project, however, will not be deemed Substantially Complete until the last Substantial Completion date is achieved such that all Work is Substantially Complete. The Project Substantial Completion date will be used for the commencement of warranties and the calculation of statutes of limitations or repose concerning the Project, as well as any other determinations that are to be made based on the date of Substantial Completion.

## § 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 as required in Article 11 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence if 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 Owner/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.

**§ 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 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 Construction Manager's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Architect/Owner will promptly make such inspection and, when Architect/Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, Owner/Architect will promptly issue a Certificate of Final Completion stating that to the best of Owner/Architect's knowledge, information and belief, and on the basis of Owner's/Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents. Owner's/Architect's Certificate of Final Completion will constitute a further representation that conditions listed in Section 9.10.2 as precedent to Construction Manager's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage will become due until Construction Manager submits to Architect/Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or 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 and will not be canceled or allowed to expire until at least 30 Days' prior written notice has been given to Owner, (3) a written statement that Construction Manager knows of no substantial 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 and (5), if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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 Owner. If a Subconsultant/Subcontractor refuses to furnish a release or waiver required by Owner, Construction Manager may furnish a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made, Construction Manager must refund to Owner all money that Owner may be compelled to pay in discharging such lien, 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 Construction Manager or by issuance of Amendments/Change Orders affecting final completion, and Owner/Architect so confirms, Owner will, upon application by Construction Manager and certification by Owner/Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted must be submitted by Construction Manager to Architect/Owner. Such payment will be made under terms and conditions governing final payment, except that it will not constitute a waiver of claims.

**§ 9.10.4** Omitted.

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

**§ 9.10.6** If the Project is constructed pursuant to multiple CGMP Amendments, Owner will determine whether and to what extent each Work Component will have a Final Completion date. The Project will not be deemed Finally Complete until the last Final Completion date is achieved. The Project Final Completion date will be used for the

calculation of statutes of limitations or repose concerning the Project, as well as any other determinations that are to be made based on the date of Final Completion.

§ 9.10.7 Omitted.

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

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

Construction Manager will be responsible for initiating, maintaining and supervising all safety precautions and programs regarding the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

§ 10.2.1 Construction Manager must take reasonable precautions for safety of, and must 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 Construction Manager or Construction Manager's Subconsultants/Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement during construction.

§ 10.2.2 Construction Manager must 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 Construction Manager must 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 owners and users of adjacent sites and utilities.

§ 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, Construction Manager must exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 Construction Manager must 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 Construction Manager, a Subconsultant/Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Construction Manager is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of 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 Construction Manager. The foregoing obligations of Construction Manager are in addition to Construction Manager's obligations under Section 3.18.

§ 10.2.6 Construction Manager must designate a responsible member of Construction Manager's organization at the site whose duty will be the prevention of accidents. This Person must be Construction Manager's superintendent unless otherwise designated by Construction Manager in writing to Owner and Architect.

§ 10.2.7 Construction Manager must not permit any part of the construction or site to be loaded 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, written notice of such injury or damage, if insured, must be given to the other party within a reasonable time not exceeding 21 Days after discovery. The notice must provide sufficient detail to enable the other party to investigate the matter.

### **§ 10.3 HAZARDOUS MATERIALS**

§ 10.3.1 Construction Manager will be required to remediate hazardous or regulated materials, as well as other environmental issues that may be encountered during the course of the Work. Construction Manager is also responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials.

If Construction Manager 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 Construction Manager, Construction Manager must, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Architect in writing.

**§ 10.3.2** Upon receipt of Construction Manager's written notice, Owner will obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Construction Manager 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 may resume upon written agreement of Owner and Construction Manager. By Amendment/Change Order, the Contract Time may be extended appropriately and the Compensation may be increased in the amount of Construction Manager's reasonable additional costs of shut-down, delay and start-up, as approved by the Owner.

**§ 10.3.3** Omitted.

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

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

**§ 10.3.6** Omitted.

#### **§ 10.4 EMERGENCIES**

In an emergency affecting safety of individuals or property, Construction Manager must act, at Construction Manager's discretion, to prevent threatened damage, injury or loss. Additional Compensation or extension of time claimed by Construction Manager because an emergency will be determined as provided in Article 15 and Article 7.

**ARTICLE 11 INSURANCE AND BONDS:** See Exhibit 3; Insurance and Bonding Requirements included in the Contract Documents.

#### **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 Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by Owner/Architect, be uncovered for Owner's/Architect's examination and be replaced at Construction Manager's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that Architect or Owner has not specifically requested to examine prior to its being covered, Owner/Architect may request to see such Work and it must be uncovered by Construction Manager. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement will, by appropriate Amendment/Change Order, be at Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction will be at Construction Manager's expense unless the condition was caused by Owner or a separate contractor in which event Owner will be responsible for payment of such costs.

##### **§ 12.2 CORRECTION OF WORK**

###### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

Construction Manager must promptly correct Work rejected by Architect/Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and if fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for Architect's services and expenses made necessary thereby, will be at Construction Manager's expense.

## **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to Construction Manager's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Project or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Construction Manager must correct it promptly after receipt of written notice from Owner to do so unless Owner has previously given Construction Manager a written acceptance of such condition. Owner will give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if Owner fails to notify Construction Manager and give Construction Manager an opportunity to make the correction, Owner waives the rights to require correction by Construction Manager and to make a claim for breach of warranty. If Construction Manager fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from Owner or Architect, Owner may correct it in accordance with Section 2.4.

**§ 12.2.2.2** The one-year period for correction of Work must be extended with respect to portions of Work first performed after Substantial Completion by the period 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 may not be extended by corrective Work performed by Construction Manager pursuant to this Section 12.2.

**§ 12.2.3** Construction Manager must 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 Construction Manager nor accepted by Owner.

**§ 12.2.4** Construction Manager must bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Owner or separate contractors caused by Construction Manager's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 will be construed to establish a period of limitation with respect to other obligations Construction Manager 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 Construction Manager to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Construction Manager's liability with respect to Construction Manager's obligations other than specifically to correct the Work.

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

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

The Contract will be governed by the law of the place where the Project is located.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract may assign the Contract without written consent of the other. If either party attempts to make such an assignment without such consent, that party will nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** Omitted.

### **§ 13.3 WRITTEN NOTICE**

Written notice will be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

## § 13.4 RIGHTS AND REMEDIES

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

§ 13.4.2 No action or failure to act by Owner, Architect or Construction Manager will constitute a waiver of a right or duty afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

## § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work must 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, Construction Manager must decide for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and must bear all related costs of tests, inspections and approvals. Construction Manager must give Architect/Owner timely notice of when and where tests and inspections are to be made so that Architect/Owner may be present for such procedures. Owner will bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit Owner from delegating their cost to Construction Manager.

§ 13.5.2 If Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, Architect will, upon written authorization from Owner, instruct Construction Manager to make arrangements for such additional testing, inspection or approval by an entity acceptable to Owner, and Construction Manager must give timely notice to Owner/Architect of when and where tests and inspections are to be made so that Owner/Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, will be at Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 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 Architect's services and expenses will be at Construction Manager's expense.

§ 13.5.4 Required certificates of testing, inspection or approval must, unless otherwise required by the Contract Documents, be secured by Construction Manager and promptly delivered to Owner/Architect.

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

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Omitted.

### § 14.2 TERMINATION BY OWNER FOR CAUSE

§ 14.2.1 Owner may terminate the Contract if Construction Manager

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subconsultants/Subcontractors for materials or labor in accordance with the respective agreements between Construction Manager and the Subconsultants/Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, Owner may without prejudice to any other rights or remedies of Owner and after giving Construction Manager seven Days' written notice, terminate employment of Construction Manager and may, subject to any prior rights of the surety:

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

§ 14.2.3 When Owner terminates the Contract for one of the reasons stated in Section 14.2.1, Construction Manager will not be entitled to receive further payment for Work satisfactorily performed prior to the date of termination until the Work is finished.

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

### § 14.3 SUSPENSION BY OWNER FOR CONVENIENCE

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

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

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

### § 14.4 TERMINATION BY OWNER FOR CONVENIENCE

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

§ 14.4.2 Upon receipt of written notice from Owner of such termination for Owner's convenience, Construction Manager must

- .1 cease operations as directed by Owner in the notice;
- .2 take actions necessary, or that 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 Owner's convenience, Construction Manager will be entitled to receive payment for Work executed, and costs incurred because of such termination, along with reasonable overhead and profit on the Work not executed.

## 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, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Construction Manager arising out of or relating to the Contract. The responsibility to substantiate Claims will rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either Owner or Construction Manager must be initiated by written notice to the other party. Claims by either party must 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 CONTINUING CONTRACT PERFORMANCE

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

### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If Construction Manager wishes to make a Claim for an increase in the Compensation, written notice as provided herein must be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If Construction Manager wishes to make a Claim for an increase in the Contract Time, written notice as provided herein must be given. Construction Manager's Claim must 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.

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

#### 1) Weather.

- a) **Definition.** A "Weather Day" is a Day on which Construction Manager's current schedule indicates Work is to be done and on which inclement weather and related site conditions prevent Construction Manager from performing 7 hours of Work between the hours of 7:00 a.m. and 5:00 p.m. Central Standard Time. Weather Days are Excusable Delays. To constitute a Weather Day, Construction Manager must document to Owner that no Work whatsoever could have been performed on the Day in question, despite Construction Manager's use of all reasonable efforts to Work.
- b) **Weather Preventing Work.** When weather conditions at the site prevent Work from proceeding, Construction Manager must immediately notify Owner so that it may confirm the conditions. At the end of each calendar month, Construction Manager must submit to Owner a list of Weather Days occurring in that month along with documentation of their impact on critical activities. Construction Manager's list will be used to determine whether Construction Manager is entitled to any extension of time due to Weather Days.
- c) **Established Weather Days.** The assumes the following Weather Days during each month of the Work (on a month by month, and not cumulative, basis) and any weather delay Days during any month more than such Days applicable to such month as stated below will be treated as a Force Majeure:

Month	Anticipated Delay Days Due to Weather
January	5
February	4
March	5
April	6
May	6
June	4
July	4
August	4
September	5
October	4
November	4
December	4

- d) **Time Extensions for Weather Days.** Time extensions for Weather Days will be granted on a Day for Day basis only to the extent the actual Work Days lost during a month exceed the Anticipated Delay Days Due to



Weather indicated in the table. Days on which no activity has been planned or scheduled are not considered Work Days.

### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

Construction Manager 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 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 Construction Manager 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 15.1.6 will be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Omitted.

### § 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 9.10.5, and 15.1.6 will be subject to mediation as a condition precedent to seeking any other alternative recourse (e.g. arbitration, litigation, etc.).

§ 15.3.2 The parties will endeavor to resolve their Claims by mediation. A request for mediation must be made in writing, delivered to the other party to the Contract, and filed with the Person administering the mediation.

§ 15.3.3 The parties will share the mediator's fee and any filing fees equally. The mediation will be held in the place where the Project is located, unless another location is mutually agreed upon.

§ 15.4 Omitted.

# DRAFT AIA® Document A133™ – 2009

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

CONTRACT (“Contract”) made as of the \_\_\_\_ day of \_\_\_\_ in the year 2018.

**BETWEEN** Owner:

Dallas/Fort Worth International Airport Board  
2400 Aviation Drive  
P.O. Box 619428  
Dallas/Fort Worth International Airport  
DFW Airport, Texas 75261

and Construction Manager:  
*(Name, legal status and address)*

for the following Project:  
*(Name and address or location)*

Architect:  
*(Name, legal status and address)*

Owner’s Designated Representative:  
*(Name, address and other information)*

Construction Manager’s Designated Representative:  
*(Name, address and other information)*

Architect’s Designated Representative:  
*(Name, address and other information)*

Owner and Construction Manager agree as follows.

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

- 1) The Contract Documents consist of those documents listed and further addressed in the Clause entitled “Contract Documents/Order of Precedence” set forth in Exhibit 2; Supplemental Conditions, all of which form the Contract.
- 2) Upon Owner’s acceptance of Construction Manager’s Guaranteed Maximum Price (“GMP”) proposal or Component Guaranteed Maximum Price (“CGMP”) proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the GMP/applicable CGMP Amendment and revisions prepared by Architect/Owner and furnished by Owner as described in Section 2.2.8.
- 3) The parties acknowledge that if the Project utilizes CGMP Amendments, each CGMP Amendment will have its own associated documents described in Section 2.2.3 and 2.2.8.

**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.

AIA Document A201™-2007, 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.

- 4) The Contract Documents represent the entire and integrated agreement between the parties and supersede prior negotiations, representations or agreements, either written or oral.
- 5) Chapter 2269; Texas Government Code; Subchapter F (“CM@R Statute”), applies to this Contract. To the extent there is a conflict between this Contract and the CM@R Statute, this Contract will control.

### **§ 1.2 Relationship of the Parties**

Construction Manager accepts the relationship of trust and confidence established by this Contract and covenants with Owner to cooperate with Owner and Architect and exercise Construction Manager’s skill and judgment in furthering the interests of Owner to furnish efficient construction administration, management services and supervision; to always furnish an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with Owner’s interests.

### **§ 1.3 General Conditions**

For the Pre-Construction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, will apply only as specifically provided in this Contract. For the Construction Phase, the general conditions of the contract will be as set forth in A201–2007, which document is incorporated herein by reference.

### **§ 1.4 Omitted.**

## **ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES**

Construction Manager’s Pre-Construction Phase responsibilities are set forth in Sections 2.1 and 2.2. Construction Manager’s Construction Phase responsibilities are set forth in Section 2.3. Owner and Construction Manager may agree for the Construction Phase to commence prior to completion of the Pre-Construction Phase, in which case, both phases will proceed concurrently. Construction Manager must identify a representative authorized to act on behalf of Construction Manager with respect to the Project.

### **§ 2.1 Pre-Construction Phase**

#### **§ 2.1.1 Initial Pre-Construction Phase Services; Process for Assigning Pre-Construction Phase Services.**

- 1) Pre-Construction Phase Services will be assigned and documented by the parties’ execution of a Pre-Construction Phase Services Amendment (“Pre-Con Amendment”).
- 2) When Owner identifies specific Pre-Construction Phase Services it desires Construction Manager to perform, it will provide Construction Manager with a written request (“Pre-Con Request”) for a proposal (“Pre-Con Proposal”) for those services. The Pre-Con Request will be issued by the Owner’s representative of the Procurement and Materials Management Department or a person to whom he/she may delegate.
- 3) The Pre-Con Request will contain sufficient information to enable Construction Manager to prepare a responsive Pre-Con Proposal which may include, but not be limited to the following:
  - a) scope of services;
  - b) schedule;
  - c) budget;
  - d) additional compensation terms applicable to Pre-Construction Phase Services;
  - e) additional terms and conditions applicable to Pre-Con Amendment;
  - f) facilities or equipment Owner is willing to provide to Construction Manager while performing any Pre-Construction Services; and
  - g) etc.
- 4) Within 10 Days (or sooner, if specified in the Pre-Con Request) of Construction Manager’s receipt of a Pre-Con Request, it will prepare and submit to Owner its Pre-Con Proposal.
- 5) If the parties agree on the terms of a Pre-Con Amendment, one will be prepared for their joint execution, subject to any requirement that it be legislatively approved by Owner’s Board.
- 6) The parties acknowledge that one of the first Pre-Con Amendments to be negotiated between them may involve establishing and validating a construction budget (“Construction Cost Budget”), which may include identifying packages of Pre-Construction Phase Services that will be the subject of one or more additional Pre-Con Amendments.

#### **§ 2.1.2 Consultation**

Construction Manager must schedule and conduct meetings with Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Construction Manager must advise Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment.

Construction Manager must also provide recommendations consistent with the Project requirements to Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

### § 2.1.3

- 1) When, in the Owners assessment (which decision is final) Project requirements have been sufficiently identified, Construction Manager, when requested and as directed by Owner, must prepare and periodically update a Project schedule for Architect's review and Owner's acceptance. The Project schedule must coordinate and integrate Construction Manager's services, Architect's services, other Owner consultants' services, and Owner's responsibilities and identify items that could affect the Project's timely completion.
- 2) Depending on Owner's directives, the Project schedule may include the entire Project or be limited to 1 or more Components.
- 3) The updated Project schedule must include additional information directed by Owner which may include, but not be limited to the following:
  - a) date(s) for submitting the GMP/ or applicable CGMP proposal(s);
  - b) applicable Component(s) of the Work;
  - c) times of commencement and completion required of each Subcontractor/Subconsultant;
  - d) ordering and delivery of products, including those that must be ordered well in advance of construction;
  - e) the occupancy requirements of Owner; and/or
  - f) etc.

### § 2.1.4 Component Construction

- 1) Construction Manager must provide recommendations concerning accelerated or fast-track scheduling, procurement strategy and, if directed by Owner, Component construction.
- 2) Construction Manager must confirm the constructability of the Project, establish and validate the Construction Cost Budget and the Project Schedule, and depending on Owner's directives, either:
  - a) **GMP Option:** propose a Guaranteed Maximum Price for the entire Project and provide a proposed schedule for achieving Substantial Completion of the entire Project by a date directed by Owner; or
  - b) **CGMP Option:** propose the Components it plans to segregate the Work into and, as requested, provide a Component Guaranteed Maximum Price and schedule for achieving Substantial Completion for the Component and, if requested, the entire Project by a date directed by Owner. Depending on Owner's directives, Construction Manager may be required to provide a proposed schedule for 1 or more Components, as well as dates for Substantial Completion for particular Components.
- 3) Regardless of which option is used, Construction Manager must review the design with the Architect and Owner and make recommendations with respect to dividing the Work (either within a Component or within the entire Project) in such a manner that will permit the Construction Manager to solicit Trade Packages and to award Subcontracts and/or Supply Agreements to maintain the Project Schedule. The Construction Manager must take into consideration such factors cost reductions, cost information, constructability, provisions for temporary facilities, procurement and construction scheduling issues, natural and practical lines of severability, sequencing effectiveness, access and availability constraints, safety, total time for completion, construction market conditions, availability of labor and materials, community relations, local participation, diversity of work force and any other factors pertinent to saving time and cost by overlapping design and construction. "Trade Packages" are the portion of the Construction Documents and other documents used by Construction Manager to procure the services and materials necessary to complete the Work.
- 4) If Owner directs Construction Manager to construct the Project in Components, the parties will use CGMP Amendments for the Components. In that case, the sum of all CGMP Amendments may not exceed the Construction Cost Budget, excluding monies expended/to be expended for Pre-Construction Phase Services, but including Construction Manger's Contingencies described in Section 2.2.4, Construction Manager's General Conditions and Construction Manager's Fee. Any CGMP Amendment will more specifically address the Component Work included in it and the payment of Construction Manager's Fee associated with the Component Work, as well as any other details necessary. CGMP Amendments will be issued by the Owner's representative of the Procurement and Materials Management Department or a person to whom he/she may delegate.

### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by Architect, Construction Manager must prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for Architect's review and Owner's approval. If Architect or Construction

Manager suggests alternative materials and systems, Construction Manager must provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, Construction Manager must prepare and update, at appropriate intervals agreed to by Owner, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design. Such estimates must be provided for Architect's review and Owner for its approval. Construction Manager must inform Owner and Architect when estimates of the Cost of the Work exceed the Construction Cost Budget and make recommendations for corrective action.

#### § 2.1.6 Subconsultants/Subcontractors

Construction Manager must develop bidders' interest in the Project by implementing community outreach programs and initiating other appropriate measures (of its own volition or as directed by Owner) to ensure that its solicitation of bids/proposal for the Project achieve a level of competition acceptable to Owner and realize appropriate savings because of that competition.

§ 2.1.7 Construction Manager must prepare, for Architect's review and Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. Construction Manager must expedite and coordinate the bidding, ordering and delivery of materials that must be ordered well in advance of construction.

#### § 2.1.8 Extent of Responsibility

Construction Manager must exercise reasonable care in preparing schedules and estimates. Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but Construction Manager must promptly report to Architect and Owner any nonconformity discovered by or made known to Construction Manager as a request for information in such form as Architect/Owner may require.

#### § 2.1.9 Notices and Compliance with Laws

Construction Manager must comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

#### § 2.1.10 Other Pre-Construction Phase Services

Construction Manager may also be required to provide the following Pre-Construction Phase Services:

- 1) Provide professionals, on a full or part-time "as needed" basis, to provide Pre-Construction Phase Services assigned. The number and assignments of the individuals may fluctuate. Owner reserves the right to review resumes and interview proposed personnel for Pre-Construction Phase Services and to approve or reject Construction Manager's proposed candidates at Owner's sole discretion. This right also applies to proposed replacement personnel when personnel must be replaced. The professionals providing Pre-Construction Phase Services may be required to office onsite at the DFW Design, Code and Construction ("DCC") Building Complex. If that is the case, office space, office furniture and telephone service may be supplied by Owner, but Construction Manager must supply its own vehicles and other supplies necessary.
- 2) Work on a Day-to-Day basis with DCC during the design phase to develop and administer the Pre-Construction Phase Services for the Project.
- 3) Provide a qualified representative(s) to attend design coordination meetings and any other meetings upon request from Owner staff (attendance of disciplines will be determined by Owner staff). Work will include coordination and assistance on all aspects of the design phase.
- 4) Develop and maintain detailed Project schedules, generally including, but not limited to:
  - a. Provide overall master schedule identifying all phases of Work for the Project.
  - b. Provide or assist in providing detailed Project phasing plans, for efficient execution of the Project.
  - c. Provide schedule impact analysis regarding changes and other Project impacting items.
  - d. Provide schedule updates for progress and revisions.
2. A CPM Schedule must include:
  - a. Detailed Critical Path Method (CPM) Diagram of all Project activities, including procurement and delivery of major deliverables or field equipment, and Subconsultant/Subcontractor schedules.
  - b. Work Breakdown Structure (WBS) as defined by Project's Scope of Work

- c. Respective WBS assignment for each Activity
- d. Summary Bar Chart-(Gantt Chart)
- e. Resource & Cost loading –
  - i. Cost loading must include:
    1. Budgeted Cost
    2. Cost to Date
    3. (S-Curve) graphical report including: Contract amount line, Baseline curve, Milestone markers, Work-in-Progress, ETC Curve, EAC line.
  - f. Planned cash flows based on early and late activity dates. Bi-weekly graphical reporting of actual cashflow vs. baseline plan.
  - g. Responsibility Code by Company
  - h. Primavera XER files will be submitted monthly
3. Issue Bi-weekly Progress Reports to Owner on the status, activities and progress of the Project.
4. Provide services required to develop and implement all necessary studies to determine actual facility needs, components and arrangements.
5. Prepare budget estimates of capital cost for the Project based on baseline documents and other estimates as needed to support the Project.
6. Coordinate with Owners DFW Cost Engineer regarding quantity takeoff, and cost estimating.
7. Provide all requested coordinating, supervising, programming, scheduling, cost control, administration, and support services during Project design phase.
8. Review and monitor the quality and progress of the Drawings, Specifications and material requisitions during design phase as requested.
9. Perform value engineering studies and recommend alternative designs, materials and methods if design adversely affects cost, schedule, constructability or operations.
10. Provide constructability reviews to ensure Project can be constructed as efficiently and effectively as possible. Make recommendation for changes to the plans and specifications based on this review.
11. Conduct site visits and field investigation to ensure plans and specifications accurately reflect current field conditions. Make recommendations for changes to the plans and specifications based on these investigations.
12. Develop Subconsultant/Subcontractor bid packages to ensure the success of the Project by packaging Work in a cost-effective manner, allowing opportunities for all size firms to participate in the Work in conjunction with the Architect/Engineer of Record.
13. Prepare cost estimates of the Subconsultant/Subcontractor bid packages based on completed drawings And Specifications.
14. Perform all other services as requested to maintain Project schedule.
15. Assist in the development of the specific plans relating to implementation of the Project. This may include, but is not limited to the following:
  - a. Insurance and Safety Plans
  - b. Project procedures related to Project implementation
  - c. Risk Management Plan
  - d. Environmental Plan
  - e. Business Development and Diversity Plan
  - f. Public Outreach Plan
  - g. Resource Plan
  - h. Project Documentation Standards
  - i. Communication Plan
  - j. Phasing Strategy/Sequencing Plan
  - k. Commissioning plan

## § 2.2 GMP/CGMP Proposal and Contract Time

§ 2.2.1 As directed by the Owner, Construction Manager must prepare a GMP proposal or CGMP proposals for Owner's review and acceptance. The GMP in the proposal must be the sum of Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, Construction Manager's General Conditions and Construction Manager's Fee. A CGMP in a CGMP proposal must be the sum of Construction Manager's estimate of the Cost of the Work for the applicable Component, including contingencies described in Section 2.2.4, and the portion of Construction Manager's General Conditions and Fee allocated to the Component.

§ 2.2.2 To the extent that the Drawings and Specifications applicable to the GMP or specific CGMP at issue are anticipated to require further development by Architect, Construction Manager must provide in the GMP/CGMP for

such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development (as agreed to by the Owner) does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, will be incorporated by Change Order.

§ 2.2.3 Construction Manager must include with the GMP/CGMP proposal a written statement of its basis, which must include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by Construction Manager in the preparation of the GMP/CGMP proposal, including assumptions under Section 2.2.2, to supplement the information provided by Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed GMP/CGMP, including a statement of the estimated Cost of the Work included in it, organized by trade categories or systems, Construction Manager's Contingency, and Construction Manager's General Conditions and Fee in the case of a GMP or, in the case of a CGMP, that portion of Construction Manager's General Conditions and Fee allocated to the CGMP; and
- .4 The anticipated date of Substantial Completion upon which the proposed GMP/CGMP is based, if a date of Substantial Completion has not otherwise been provided by Owner.

§ 2.2.4 In preparing Construction Manager's GMP/CGMP proposal, Construction Manager must include any Construction Manager's Contingencies it deems appropriate or as directed by Owner. Owner may also include in any GMP Amendment/CGMP Amendment an Owner's Allowance subject to its control that will be excluded from the GMP/CGMP.

§ 2.2.5 Construction Manager must meet with Owner and Architect to review the GMP/CGMP proposal. If Owner and Architect discovers any inconsistencies or inaccuracies in the information presented, it will promptly notify Construction Manager, who must make appropriate adjustments to the GMP/CGMP proposal, its basis, or both.

§ 2.2.6 Owner will notify Construction Manager in writing whether it has accepted the GMP/CGMP proposal. Following acceptance of a GMP/CGMP proposal, Owner and Construction Manager will execute the GMP Amendment/a CGMP Amendment amending this Contract, subject to legislative approval. The GMP Amendment/CGMP Amendment must set forth the agreed upon GMP/CGMP with the information and assumptions upon which it is based.

§ 2.2.7 Omitted.

§ 2.2.8 Owner will provide any required revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications to be contained in the GMP Amendment/CGMP Amendment. Owner will, in a reasonable amount of time, furnish those revised Drawings and Specifications to Construction Manager as they are revised. Construction Manager must notify Owner and Architect of any inconsistencies between the GMP Amendment/CGMP Amendment and the revised Drawings and Specifications.

§ 2.2.9 Construction Manager's GMP/CGMP proposal must take into consideration all sales, consumer, use and similar taxes for the Work provided by Construction Manager for which Owner is exempt by being a non-taxable governmental entity.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work will mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase will commence upon Owner's issuance of a:

- 1) GMP Notice to Proceed after execution the GMP Amendment; or
- 2) CGMP Notice to Proceed after the execution of the first CGMP Amendment.<sup>1</sup>

<sup>1</sup> Owner will also issue Notices to Proceed concerning each CGMP Amendment executed for the Project.

### **§ 2.3.2 Administration**

§ 2.3.2.1 and § 2.3.2.2 The performance of Work under this Contract and the solicitation of that Work will be done in accordance with the Contract Documents and the CM@R Statute.

§ 2.3.2.3 Subcontracts or other agreements must conform to the applicable provisions of this Contract.

§ 2.3.2.4 If Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then Construction Manager must promptly notify Owner in writing of such relationship and of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 Construction Manager must schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. Construction Manager must prepare and promptly distribute minutes to Owner and Architect, unless directed otherwise by Owner.

§ 2.3.2.6 Upon the execution of the GMP Amendment/CGMP Amendment, Construction Manager must prepare and submit to Owner and Architect a construction schedule that reflects the completion dates dictated by the Owner, for the Work and submittal schedule in accordance with Section 3.10 of A201–2007. For a GMP Amendment, the schedule must address the Project in its entirety. For a CGMP Amendment, the schedule must also address the Component to which the CGMP Amendment applies. Owner may, in its discretion, direct Construction Manager to include other information in any of the schedules required under this clause.

§ 2.3.2.7 Construction Manager must record the progress of the Project. Monthly, or otherwise as agreed to by Owner, Construction Manager must submit written progress reports to Owner and Architect, showing percentages of completion and other information required by Owner. Construction Manager must also keep, and make available to Owner and Architect, a daily log containing a record for each Day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by Owner.

§ 2.3.2.8 Construction Manager must develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Construction Manager must identify variances between actual and estimated costs and report the variances to Owner and Architect and must provide this information in its monthly reports to Owner and Architect, in accordance with Section 2.3.2.7.

### **§ 2.4 Professional Services**

Section 3.12.10 of A201–2007 will apply to both the Pre-Construction and Construction Phases.

### **§ 2.5 Hazardous Materials**

Section 10.3 of A201–2007 will apply to both the Pre-Construction and Construction Phases.

## **ARTICLE 3 OWNER’S RESPONSIBILITIES**

### **§ 3.1 Information and Services Required of Owner**

§ 3.1.1 Owner will provide information, with reasonable promptness, regarding requirements for and limitations on the Project.

§ 3.1.2 Omitted.

§ 3.1.3 Omitted.

§ 3.1.4 Omitted.

§ 3.1.4.1 Omitted.

§ 3.1.4.2 Omitted.

§ 3.1.4.3 Omitted.

§ 3.1.4.4 Omitted.



### § 3.2 Owner's Designated Representative

Owner will identify a representative authorized to act on behalf of Owner with respect to the Project. Owner's representative will render decisions promptly and furnish information expeditiously, to avoid unreasonable delay in the services or Work of Construction Manager. The term "Owner" means Owner or Owner's authorized representative.

§ 3.2.1 Omitted.

§ 3.3 Omitted.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For Construction Manager's Pre-Construction Phase Services, Owner will compensate Construction Manager as follows:

§ 4.1.1.1 Construction Manager (and its Subconsultants/Subcontractors if any) will be compensated for Pre-Construction Phase Services pursuant to the fully loaded hourly rates set forth on Exhibit 5; Pre-Construction Phase Services Fully Burdened Hourly Rates. Construction Manager will not be entitled to any mark-up on Subconsultant/Subcontractor invoices.

§ 4.1.1.2 Compensation for Pre-Construction Phase Services is limited to the fully loaded hourly rates and does not include payment to Construction Manager or its Subconsultants/Subcontractors for any additional Costs. The provision of all resources necessary to provide the Pre-Construction Phase Services are the responsibility of Construction Manager and all such Costs are to be satisfied out of the fully burdened hourly rates set forth in this Agreement, except for resources this Agreement obligates Owner to provide.

§ 4.1.2 Additional details concerning any Pre-Construction Phase Services will be included in the Pre-Con Amendment applicable to them.

§ 4.1.3 At Owner's discretion, certain reimbursable expenses may be allowed if it identifies a cost item that may not be included in the fully-burdened hourly rates and it is in its best interests to compensate Construction Manager for such costs. Construction Manager must obtain Owner's prior written approval for reimbursement of these costs prior to incurring them.

### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for Pre-Construction Phase Services will be made monthly in accordance with the hours such services were performed.

§ 4.2.2 Payments are due and payable in accordance with the Texas Prompt Pay Act; Texas Government Code Chapter 2251("Prompt Pay Act") and the Contract Documents.

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 5.1

- 1) For the complete construction of the Project per the requirements of the Contract Documents, Construction Manager will be paid the sum of the following:
  - a) the Cost of the Work;
  - b) General Conditions; and
  - c) Fee.
- 2) For Construction Manager's performance of the Work as described in Section 2.3, Owner will pay Construction Manager in accordance with the GMP Amendment or the CGMP Amendments.

### § 5.1.1 Construction Manager's Fee:

- 1) Is the lump sum amount of \$\_\_\_\_\_.
- 2) Construction Manager's Fee is the amount paid by Owner for all profit and Overhead Costs for the Construction Phase.

- 3) "Overhead Costs" are defined as: all costs that, in Owner's judgment, are not directly attributable to the Project. These costs include, but are not limited to, such items as: all off-site personnel and office expense; drafting equipment and engineering instruments; taxes and insurance other than those included as salary cost, but excluding State and Federal income tax; library and periodical expenses, and other means of keeping abreast of advances in any technical, business or professional field such as attendance at technical and professional meetings and subscriptions to trade, business, professional or technical periodicals; costs of memberships in trade, business, technical, and professional organizations; all safety awards, all suggestion awards, all incentive compensation and all bonuses (cash or otherwise) for on-site or off-site personnel. This definition is not intended as being all-inclusive. The final determination of whether specific costs are included Overhead Costs is at Owner's discretion. Owner's decision on this issue is final.
- 4) When the parties execute the GMP Amendment/a CGMP Amendment, the way Construction Manager's Fee is paid will be addressed in that document/those documents. In no event can the aggregate of Construction Manager's Fee contained in all CGMP Amendments ever exceed Construction Manager's Fee.

### **§ 5.1.2 Construction Manager's General Conditions:**

- 1) Construction Manager's General Conditions will be paid by Owner in accordance with the GMP Amendment or multiple CGMP Amendments and will be negotiated between Owner and Construction Manager prior to the execution of each amendment.
- 2) "General Conditions" are defined as: on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials. It includes, but is not limited to: All supervision and project management, including Superintendent, Assistant Superintendent; Permits; Mobilization; De-Mobilization; Field Engineer and Helper – Site work; Field Engineer and Helper – Building; Engineer – Technology; Layout Equipment/ Material; Professional Surveyor; Field Office; Field Office Furnishings; Office Supplies; Field Office Maintenance and Repair; Copier and Supplies; Storage; Communication Devices (telephone, radio, etc.); Project Signs; Construction Fence - Install/Remove/Maintain; Access Construction; General Clean-up; Clean-up Finish Areas; Clean-up Site/ Paving and Walks; Dumpsters; Temporary Water Service; Temporary Electrical Service; Temporary Lighting; Temporary Telephone Service; Temporary Protection (Weather); Temporary Protection (Fire); Equipment Start and Testing; Monthly Ice and Cups; Monthly Toilets; Monthly Water; Quality Control.

§ 5.1.3 Omitted.

§ 5.1.4 Omitted.

§ 5.1.5 Omitted.

### **§ 5.2 Compensation Not to Exceed Amount**

#### **§ 5.2.1**

- 1) Construction Manager guarantees that compensation paid to it under the Contract Documents for the Construction Phase may not exceed the lesser of the:
  - a. Construction Cost Budget; or
  - b. the GMP; or
  - c. all CGMP's.
- 2) To the extent the Cost of the Work exceeds the GMP or the sum of all CGMP's, Construction Manager must bear those additional costs.

§ 5.2.2 The GMP/each CGMP is subject to additions and deductions, as directed by the Owner, by Change Order as provided in the Contract Documents.

### **§ 5.3 Changes in the Work**

§ 5.3.1 Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. Owner will issue such changes in writing.

§ 5.3.2 Adjustments to the GMP/a CGMP because of changes in the Work after the execution of the GMP Amendment/a CGMP Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 Omitted.

§ 5.3.4 In calculating adjustments to the GMP/a CGMP, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 will mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Contract and the term “fee” will mean Construction Manager’s Fee as defined in Section 5.1 of this Contract.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work will mean costs necessarily and reasonably incurred by Construction Manager in the proper performance of the Work. Such costs will be at rates not higher than the standard paid at the place of the Project, except with prior consent of Owner. The Cost of the Work will include only the items set forth in Sections 6.1 through 6.7, or as approved by the Owner, who’s decision is final.

§ 6.1.2 Where any cost is subject to Owner’s prior approval, Construction Manager must obtain this approval prior to incurring the cost. The parties will endeavor to identify any such costs prior to executing the GMP Amendment/a CGMP Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the site or, with Owner’s prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of Construction Manager’s supervisory and administrative personnel when stationed at the site with Owner’s prior approval.

§ 6.2.3 Wages and salaries of Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Labor Burden for Costs paid or incurred by Construction Manager for taxes, insurance, contributions, assessments and benefits required by law, including customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, for wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

### § 6.3 Subcontract Costs

Payments made by Construction Manager to Subconsultants/Subcontractors will be in accordance with the requirements of the Subcontracts and Owner will reimburse Construction Manager for payments made by it to Subconsultants/Subcontractors in the same manner. Construction Manager must bid out Subconsultant/Subcontractor Work in a way that it is most advantageous to Owner. Owner reserves the right to dictate the way in which Subconsultant/Subcontractor Work is to be solicited and awarded. Construction Manager is not entitled to any mark-up on Subcontract costs.

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

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

#### § 6.4.2

- 1) Costs of materials described in Section 6.4.1 more than those installed to allow for reasonable waste and spoilage. Unused excess materials, if any, will, at the option of Owner:
  - a) become Owner’s property at the completion of the Work;
  - b) must be sold by Construction Manager in accordance with directions provided by Owner. Any amounts realized from such sales must be credited to Owner as a deduction from the Cost of the Work; and/or
  - c) must be retained by Construction Manager at its cost (such costs will not be reimbursed as Cost of the Work).

- 2) Owner will advise Construction Manager in writing as to the preferred manner in dealing with unused excess materials.
- 3) Construction Manager must, throughout the Project, maintain an accurate and up to date inventory of all unused excess materials to which this provision applies.
- 4) Owner, may from time to time, request from Construction Manager a copy of the accurate and up to date inventory, which will be provided to Owner within 3 Days of its request.

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

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed will be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by Construction Manager will mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment will be subject to Owner's prior approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions.

**§ 6.5.5** Omitted.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to Owner's prior approval and if Construction Manager submits to Owner evidence that such offsite stored materials and equipment are insured to the Owner's satisfaction.

## **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

**§ 6.6.2** Omitted.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Omitted.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with Owner's prior approval.

**§ 6.6.7** Omitted.

**§ 6.6.8** Omitted.

**§ 6.6.9** Subject to Owner's prior written approval, expenses incurred in accordance with Construction Manager's standard written personnel policy for relocation and temporary living allowances of Construction Manager's personnel required for the Work.

## **§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Omitted.

§ 6.7.2 Costs incurred in acting to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subconsultants/Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager/Subconsultant/Subcontractor/supplier and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 will be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### § 6.8 Costs Not to Be Reimbursed

§ 6.8.1 The Cost of the Work may not include the items listed below:

- .1 Salaries and other compensation of Construction Manager’s personnel stationed at Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of Construction Manager’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 Construction Manager’s capital expenses, including interest on Construction Manager’s capital employed for the Work;
- .5 Costs due to the negligence or failure of Construction Manager, Subconsultants/Subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs that would cause the GMP/CGMP to be exceeded;
- .8 Costs for services incurred during the Pre-Construction Phase; and
- .9 Costs Owner determines, in its sole discretion, are not reimbursable Cost of the Work.

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by Construction Manager will accrue to Owner if (1) before making the payment, Construction Manager included them in an Application for Payment and received payment from Owner, or (2) Owner has deposited funds with Construction Manager with which to make payments; otherwise, cash discounts will accrue to Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment will accrue to Owner, and Construction Manager must make provisions so that they can be obtained. Construction Manager must advise Owner in writing within 3 Days of its receipt of a discount, rebate or refund to which this provision applies so that an appropriate adjustment to Construction Manager’s payment of the Cost of the Work can be made.

§ 6.9.2 Amounts that accrue to Owner in accordance with the provisions of Section 6.9.1 must be credited to Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term “related party” will mean:

- a) a parent, subsidiary, affiliate or other entity having common ownership or management with Construction Manager;
- b) any entity in which any stockholder in, or management employee of, Construction Manager owns any interest more than ten percent in the aggregate;
- c) if Construction Manager is a joint venture, partnership, limited liability company or similar business entity, any Person that is a member of such business entity (e.g. for a joint venture, all Persons that are joint venturers, for a partnership, all Persons that are partners and for a limited liability company, all Persons that are members); or
- d) any Person which has the right to control the business or affairs of Construction Manager.

The term “related party” includes any member of the immediate family of any Person identified in this Clause.

**§ 6.10.2** If any Cost of the Work to be reimbursed arises from a transaction between Construction Manager and a related party, Construction Manager must notify Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If Owner, after such notification, authorizes the proposed transaction, then the cost incurred will be included as a Cost of the Work to be reimbursed, and Construction Manager must procure the Work, equipment, goods or service from the related party, as a Subcontractor/Subconsultant, according to the requirements of the Contract Documents. If Owner fails to authorize the transaction, Construction Manager must procure the Work, equipment, goods or service from some Person other than a related party.

### **§ 6.11 Accounting Records**

Construction Manager must keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems must be satisfactory to Owner. Owner and Owner's auditors must, during regular business hours and upon reasonable notice, be afforded access to, and must be permitted to audit and copy, Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, Subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. Construction Manager must preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to Owner by Construction Manager and payment determinations made by Owner, it will make progress payments to Construction Manager as provided in the Contract Documents. Owner will endeavor to pay each approved Application for Payment within 30 Days of its receipt.

**§ 7.1.2** The period covered by each Application for Payment will be one calendar month ending on the last Day of the month.

**§ 7.1.3** Owner will make payment of monies it determines are payable under a Pay Application in accordance with the Prompt Pay Act and the Contract Documents.

**§ 7.1.4** With each Application for Payment, Construction Manager must submit payrolls, receipted invoices or invoices with check vouchers attached, and any other evidence required by Owner to demonstrate that cash disbursements already made by Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by Construction Manager, less that portion of those payments attributable to Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

**§ 7.1.5** Each Application for Payment must be based on the most recent schedule of values applicable to the Work encompassed in the Pay Application submitted by Construction Manager in accordance with the Contract Documents. The schedule of values must allocate the entire GMP/CGMP among the various portions of the associated Work, except that Construction Manager's Fee (or the portion of it applicable to a CGMP) must be shown as a single separate item. All schedules of values must be prepared in such form and supported by such data to substantiate their accuracy as Owner may require. These schedules, unless objected to by Owner, will be used as a basis for reviewing Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment must show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion will be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by Construction Manager on account of that portion of the Work for which Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP/CGMP allocated to that portion of the Work in the applicable schedule of values.

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

- .1** Take that portion of the GMP/CGMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the GMP/CGMP

- allocated to that portion of the Work in the applicable schedule of values. Pending final determination of cost to Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of AIA Document A201–2007;
- .2 Add that portion of the GMP/CGMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by Owner, suitably stored off the site at a location agreed upon in writing;
  - .3 Add Construction Manager’s General Conditions and Fee payable for the specific progress payment, less retainage of five percent (5%). Construction Manager’s General Conditions and Fee will be payable in accordance with the GMP Amendment/CGMP Amendment
  - .4 Subtract retainage of five percent (5 %) from that portion of the Work that Construction Manager self-performs;
  - .5 Subtract the aggregate of previous payments made by Owner;
  - .6 Subtract the shortfall, if any, indicated by Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Owner’s auditors in such documentation; and
  - .7 Subtract amounts, if any, for which Owner has withheld, as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 Owner and Construction Manager will agree upon (1) a mutually acceptable procedure for review and approval of payments to Subconsultants/Subcontractors and (2) the percentage of retainage held on Subcontracts, and Construction Manager must execute Subcontracts in accordance with those agreements.

§ 7.1.9 Except with Owner’s prior approval, Construction Manager may not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on Construction Manager’s Applications for Payment, Owner will be entitled to rely on the accuracy and completeness of the information furnished by Construction Manager and will not be deemed to represent that Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that Owner has made exhaustive or continuous on-site inspections; or that Owner has made examinations to ascertain how or for what purposes Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by Owner, will be performed by Owner’s auditors acting in the sole interest of Owner.

§ 7.1.11 Nothing in the Contract Documents will preclude Owner from agreeing to any early release of retainage, as it deems in its best interests.

## § 7.2 Final Payment

### § 7.2.1

- 1) Final payment, as may be adjusted under the Contract Documents, will be made by Owner to Construction Manager when:
  - .1 Construction Manager has fully performed the Contract except for Construction Manager’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
  - .2 Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment.
- 2) Owner’s final payment to Construction Manager will be made in accordance with the Prompt Pay Act.

§ 7.2.2 Owner will review Construction Manager’s final accounting within 30 Days after its receipt. Based upon such Cost of the Work as substantiated by Construction Manager’s final accounting, and provided the other conditions of Section 7.2.1 have been met, Owner will either process the final payment or notify Construction Manager in writing of Owner’s reasons for partially or entirely withholding payment.

§ 7.2.3 If Owner determines that the Cost of the Work, as substantiated by Construction Manager’s final accounting, is less than claimed by Construction Manager, Construction Manager will be entitled to request mediation of the disputed amount. A request for mediation must be made by Construction Manager within 30 Days after Construction Manager’s receipt of a copy of Owner’s notice that the payment will be either partially or entirely withheld. Failure to request mediation within this 30-Day period will result in the Owner substantiated amount becoming binding on

Construction Manager. Pending a final resolution of the disputed amount, Owner will pay Construction Manager the amount indicated by Owner as payable.

## **ARTICLE 8 INSURANCE AND BONDS**

Construction Manager will comply with the insurance and bonding requirements set forth in Exhibit 3; Insurance and Bonding Requirements.

## **ARTICLE 9 DISPUTE RESOLUTION**

**§ 9.1** Any Claim between Owner and Construction Manager must be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007.

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution will be litigation in a court of competent jurisdiction.

## **ARTICLE 10 TERMINATION OR SUSPENSION**

### **§ 10.1 Termination Prior to Execution of the GMP Amendment or First CGMP Amendment**

**§ 10.1.1** Prior to the issuance of a GMP Notice to Proceed or the first CGMP Notice to Proceed, Owner may terminate this Contract upon not less than seven Days' written notice to Construction Manager for Owner's convenience and without cause.

**§ 10.1.2** In the event of termination of this Contract pursuant to Section 10.1.1, Construction Manager may be equitably compensated for Pre-Construction Phase Services performed prior to receipt of a notice of termination. In no event may Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

**§ 10.1.3** After the commencement of the Construction Phase, Owner may terminate this Contract upon not less than seven Days' written notice to Construction Manager for Owner's convenience and without cause. In such event, Owner will pay to Construction Manager an amount calculated as follows, which amount will be in addition to any compensation paid to Construction Manager under Section 10.1.2:

- .1** Take the Cost of the Work incurred by Construction Manager to the date of termination;
- .2** Add Construction Manager's General Conditions and Fee payable to the date of termination, computed in accordance with the GMP or applicable CGMP Amendments;
- .3** Subtract the aggregate of previous payments made by Owner for Construction Phase Services.

Owner will also pay Construction Manager fair compensation, either by purchase or rental at the election of Owner, for any equipment owned by Construction Manager which Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that Owner elects to take legal assignment of Subcontracts and purchase orders (including rental agreements), Construction Manager must, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts and other contractual rights of Construction Manager, as Owner may require for the purpose of fully vesting in Owner the rights and benefits of Construction Manager under such Subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by Construction Manager will contain provisions allowing for assignment to Owner as described above.

If Owner accepts assignment of Subcontracts, purchase orders or rental agreements, Owner will reimburse Construction Manager for all costs arising under the Subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the Contract had not been terminated. If Owner chooses not to accept assignment of any Subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this Agreement not been terminated, Construction Manager will terminate the Subcontract, purchase order or rental agreement and Owner will pay Construction Manager the costs necessarily incurred by Construction Manager because of such termination.

### **§ 10.2 Termination Subsequent to Establishing GMP/CGMP**

Following execution of the GMP Amendment/first CGMP Amendment and subject to the provisions of Section 10.2.1 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.



§ 10.2.1 If Owner terminates the Contract after the commencement of the Construction Phase pursuant to Section 14.4 of A201–2007, the amount payable to Construction Manager pursuant to Section 14.4 of A201-2007 may not exceed the amount Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Contract.

§ 10.2.2 Omitted.

### § 10.3 Suspension

The Work may be suspended by Owner as provided in Article 14 of AIA Document A201–2007. In such case, the GMP or applicable CGMP and Contract Time may be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” will be understood to mean Construction Manager’s Fee as described in Section 5.1.1 of this Contract.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Contract have the same meaning as those in A201–2007 or any other Contract Document.

### § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 will apply to both the Pre-Construction and Construction Phases.

### § 11.3 Governing Law

Section 13.1 of A201–2007 will apply to both the Pre-Construction and Construction Phases.

### § 11.4 Assignment

Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Contract. Neither Owner nor Construction Manager must assign this Contract without the written consent of the other, except that Owner may assign this Contract to a lender providing financing for the Project if the lender agrees to assume Owner’s rights and obligations under this Contract. Neither party to the Contract may assign the Contract without written consent of the other. If either party attempts to make such an assignment without such consent, that party will nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Omitted.

## ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 Omitted.

**Construction Manager:**

\_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

**Owner:**

**Dallas/Fort Worth International Airport Board**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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



### **Exhibit 3: Insurance and Bonding Requirements**

#### **1. Insurance:**

##### **A. DEFINITIONS FOR INSURANCE PROVISIONS**

1. "We", "us", or "our" means the Dallas/Fort Worth International Airport Board.
2. "You" or "your" means the vendor, contractor, tenant, consultant, engineer, architect, and their agents, servants, employees, or other party to a contract with us.
3. "Contract" means the contract, purchase order, Invitation for Bid, or similar memorandum or agreement.
4. For purpose of defining Additional Insured and Waiver of Subrogation, the term "Dallas Fort Worth International Airport Board (the Board) and the Cities of Dallas and Fort Worth, Texas" (the Cities) shall also mean the elected officials, boards, officers, employees, agents and representatives of the Board and the Cities.

##### **B. GENERAL REQUIREMENTS**

1. You shall, at your own expense, maintain in effect not less than the following coverages and limits of insurance, which you shall maintain with insurers. If your coverage fails to comply with these requirements, you agree to amend, supplement or endorse the existing coverage to comply, at no additional cost to us, and to maintain such insurance through the end of the contract, warranty period, or other specified time period, whichever is longer. ANY deviation from the requirements outlined below requires the prior written approval of the Board's Assistant Vice President of Risk Management.
2. All required policies must be written through a company approved to transact that class of insurance business in the State of Texas, with a minimum rating of 'A -', and 'VII' by A. M. Best Company. If the rating of any insurer should fall below this standard, you shall cause the policy to be replaced promptly by an acceptable insurer.
3. All required policies, except policies for workers' compensation, professional liability and pollution liability, shall designate the below mentioned parties as "Additional Insureds".
  - a. "Dallas Fort Worth International Airport Board and the Cities of Dallas and Fort Worth, Texas"
4. All required policies shall waive the insurer's right of recovery or subrogation against the Board and the Cities.
5. If any policy is in excess of a self-insured retention (SIR), the amount of such SIR must be clearly identified. We reserve the right to reject any SIR exceeding \$100,000.
6. All required policies must be primary with respect to coverage provided for the Board.
7. All required policies must be non-contributory with other coverage or self-insurance available to the Board.
8. All required Liability policies, except Pollution & Professional, must be written on an "Occurrence Form." Neither "Modified Occurrence" nor "Claims-Made" policies are acceptable, and the Contractor will be in contractual default if your insurance is "Modified Occurrence" or "Claims Made." If the Pollution or Professional Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the Contractor's first professional service to the Board, your first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to our contract.
9. All required liability policies must cover cross-suits between insureds.
10. All required liability policies must contain a "severability of interests" provision.

**C. REQUIRED COVERAGE LIMITS**

1. **Workers' Compensation** Texas Statutory Coverage
2. **Employer's Liability Insurance** \$500,000 Each Accident  
\$500,000 Each Disease, Each Employee  
\$500,000 Each Disease Policy Limit
3. All employees, leased or co-employees, independent contractors, and employees of subcontractors and vendors, occupants of the building as tenants, sub-tenants or sub sub-tenants, performing work for the Board, or entering upon the Board's premises, must be covered by Texas Workers' Compensation.
4. If Contractor is a sole proprietorship without employees and which will not be using any subcontractor(s) in the performance of the Contract Work, it may substitute the following for workers compensation insurance: The Contractor must provide the Board's Risk Management Department (Risk Management) with a Hold Harmless and Indemnification Agreement in the form attached in the "Proposal Response Forms" section.
5. **Commercial General Liability (CGL)**

Limit Any One Occurrence	\$1,000,000
Damage to Rented Premises	\$100,000
Personal and Advertising Injury	\$1,000,000
Policy Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
6. CGL coverage applies unless you provide only trucking, (no premises or operations other than driving, loading/unloading), or garage operations, (see below).
7. Aggregate limits of General Contractors or construction contracts General Liability policies shall be "per project" or "per location," as appropriate. If any aggregate limit is reduced by 25% or more by reserved and/or paid claims, the contractor must notify the Board and promptly reinstate the required aggregates.
8. If the contractor's operations involve excavation, grading, filling, backfilling, road or similar construction, General Liability policy shall not contain exclusions for subsidence or earth movement.
9. If the contractor's operations involve any construction, General liability policy shall not contain exclusions for hazards of explosion ("X"), collapse ("C") or underground ("U").
10. If the contractor's operations involve any construction, reconstruction, repair or similar work, General liability policy shall not contain any exclusion for such work.
11. **Business Automobile Liability**

<b>Combined Single Limit for Each Accident</b>	\$500,000
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  - a. Coverage must apply to all vehicles (owned, non-owned, or hired) operating on our site/location, or transporting our people or property off our site, except vehicles operated by you or your employee(s) commuting in personal vehicles to our parking facilities, in which case you must only carry Employer's Non-Ownership coverage, (same limit), and ensure that such vehicle(s) are personally insured.
  - b. Auto pollution liability coverage is required on vehicles hauling hazardous cargo.
  - c. If your operations are solely a garage (vehicle maintenance and repair), you must carry Garage Liability, instead of Business Auto Liability, but the Garage Liability must not be limited to auto liability only, and the same limit applies.

**D. ADDITIONAL LIMITS REQUIRED FOR CONTRACTS WITH OPERATIONS IN SECURE/AOA AREAS**

1. **Excess Liability (Secure Side)**  
**Limit Any One Occurrence/Aggregate** \$5,000,000
2. **Excess Liability (AOA)**  
**Limit Any One Occurrence/Aggregate** \$10,000,000
3. Total limits required may be satisfied through a combination of Primary and Excess/Umbrella Liability insurance policies.
4. Excess/Umbrella Liability coverage must follow form or be at least as broad as the underlying Primary insurance.

**E. ADDITIONAL COVERAGE AND LIMITS THAT MAY BE REQUIRED** as needed for specific contracts. Note that additional limits may be required if warranted by exposure.

1. **Professional Liability Insurance** (if providing a service) \$1,000,000
  - a. Your policy must cover the type of professional service you will provide in fulfilling your contract with the Board.
  - b. If the Professional Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the contractor's first professional service to the Board.
2. **Pollution Liability Insurance** (if exposure to pollutants) \$1,000,000
  - a. If you have any exposure to asbestos, lead, mold, (including any work which could, if not performed properly, lead to mold or fungal contamination), petroleum products, contaminated soils, or other pollutants, you shall provide appropriate Pollution Liability or Environmental Impairment insurance.
  - b. If the Pollution Liability policy is Claims-Made, the Retroactive Date must be on or before the contract date or the date of the contractor's first exposure to pollutants, or first work that may give rise to a pollution liability claim, related to our contract.

**F. ADDITIONAL REQUIREMENTS**

1. If you are a crane/rigging operator or will hoist or move property of others in connection with our contract, you must have 'care, custody & control' exclusion deleted from your Commercial General Liability policy, or provide Rigger's Liability coverage at least equal to the highest replacement cost of materials to be hoisted or moved.
2. If your vehicles carry materials belonging to others in connection with our contract, you must carry Cargo Liability coverage, at least equal to the highest value of property to be carried on a single vehicle, with terminal coverage at least equal to the highest value of property at one terminal, owned or controlled by you.
3. If you will store, warehouse, or otherwise have custody of property belonging to others in connection with our contract, you must have Warehousemen's Liability, Bailee's Customers' Goods, Garage-Keeper's Legal Liability or equivalent coverage at least equal to the highest value of property in your custody.
4. If our contract calls for you to construct a structure, you must purchase and maintain "All-Risk" Builders Risk insurance for the full completed value of the structure and contents, including all changes and sufficient limit to fund full and immediate reconstruction under adverse conditions. This policy shall name Dallas Fort Worth International Airport Board as Loss Payee, as their interest may appear.
5. If you transport materials, equipment, machinery or furnishings to, or store such property on, our construction site, you must carry an "All-Risk" Installation Floater with coverage at least equal to the greatest concentration of value, (including the cost of transit, installation labor and testing).
6. If you use rented equipment or tools on our job site or premises, you must carry Rented Equipment coverage sufficient to repair or replace damaged equipment.
7. If your work involves administration of Airport Funds, you must furnish a Third Party

Fidelity Bond that must remain in effect for the term of the contract, as modified and/or extended. The Board shall be named as "Obligee".

8. Should this Contract require the use of Subcontractors, it will be the sole responsibility of the General Contractor to either endeavor to require Subcontractors to provide and maintain the insurance limits and coverages required herein or provide said insurance coverage for the subcontractor by designating the Subcontractor as an additional insured either by a blanket additional insured endorsement, or by specific endorsement.
9. The General Contractor shall endeavor to verify that such Subcontractors are in compliance with all contractual insurance requirements.
10. The General Contractor shall assume all liability for those Subcontractors who do not meet the insurance requirements.
11. Access to the Air Operations Area will not be granted without verification of insurance coverage as required.

#### **G. CERTIFICATION OF INSURANCE**

1. Upon execution of the contract or prior to commencement of work, whichever is first, you shall provide your contract administrator with a current insurance certificate by emailing your certificate to [dfwcoi@dfwairport.com](mailto:dfwcoi@dfwairport.com), with your contract number and business name in the subject line. Please copy your contract administrator on email submissions. You shall cause your insurance data to be kept current with DFW Board for the period of time you are liable for your product or work, but not less than through the warranty period of our contract.
2. Fax or e-mail insurance certificates to the following:  
Email: [dfwcoi@dfwairport.com](mailto:dfwcoi@dfwairport.com)  
FAX: (972) 973-5651
3. You further agree, upon our oral or written request, to furnish copies of certificates of insurance, certified by an authorized representative of the insurer(s), within ten (10) days of request.
4. You shall provide to the Board's Risk Management department, at least thirty (30) days prior to cancellation, except ten (10) days for non-payment of premium of cancellation of any required coverage. You shall then arrange acceptable alternate coverage to comply with our requirements and provide an updated insurance certificate.
5. No policy submitted shall be subject to limitations, conditions or restrictions that are inconsistent with the intent of the Insurance Requirements to be fulfilled by you. The Board's decision thereon shall be final.
6. Approval, disapproval or failure to act by the Board regarding any insurance obtained by you shall not relieve you of full responsibility or liability for damages and accidents as set forth herein. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate you from liability.
7. No special payment, except when separate line item is provided, shall be made by the Board for any insurance that the Contractor may be required to carry; all are included in the Contract amount and the Contract unit prices.

## **2. Performance and Payment Bonds:**

**2.1.** The Performance Bond and Payment Bond requirements of the Contract Documents may differ depending on whether the Work is constructed under a GMP Amendment or multiple CGMP Amendments. The manner in which the Work constructed during the Construction Phase is at the discretion of Owner and subject to any negotiations between Owner and Construction Manager.

**2.2.** Pursuant to Chapter 2253 of the Texas Government Code and prior to the commencement of the Construction Phase, Construction Manager will be required to provide a

Performance Bond and Payment Bond using one or more options, as directed by Owner:

- 2.2.1.** 1 Performance Bond and 1 Payment Bond will be provided, each in the penal sum of the Construction Cost Budget;
- 2.2.2.** 1 Performance Bond and 1 Payment Bond will be provided, each in the penal sum of the GMP, as established in the GMP Amendment;
- 2.2.3.** 1 Performance Bond and 1 Payment Bond will be required for each CGMP Amendment, each in the penal sum of the GMP established in the amendment; and/or
- 2.2.4.** 1 Performance Bond and 1 Payment Bond will be required for the first CGMP Amendment, each in the penal sum of the GMP established in the amendment. As additional CGMP Amendments are executed, those bonds will be amended to increase their penal sums so that the total is not less than the total of all executed CGMP Amendments to date.

**2.3.** All Performance Bonds and Payment Bonds provided under the Contract Documents must:

- 2.3.1.** name the Construction Manager as principal and Owner as obligee; and
- 2.3.2.** be in a form approved by Owner.

**2.4.** The bonds must be issued as security for the faithful performance of the Work, including, maintenance and guarantee provisions, Construction Manager's covenants, stipulations and agreements, the payment of all bills and obligations arising out of the performance of all obligations under the Contract Documents, which bills and obligations might or would in any manner become a claim against Owner, and guaranteeing all Work in accordance with any warranty provisions of the Contract Documents.

**2.5.** Any surety company issuing a performance bond or payment bond under the Contract Documents must give Owner notice in writing by registered mail at least sixty (60) Days prior to an anniversary date of the applicable bonds of its intention not to renew or to terminate the bonds.

**2.6.** A Corporate Surety that is satisfactory to Owner, authorized to do business in the State of Texas by the Texas Department of Insurance must execute any bonds provided under the Contract Documents.

**2.7.** An agent of the Surety residing in the State of Texas must execute the applicable bonds. The Surety must appoint an agent for service in Dallas and Tarrant Counties, Texas upon whom all notices must be shown on each bond. Any Person executing bonds on behalf of Surety must file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney, and certified to by an official of the Surety.

### **3. Minimum Financial Security Requirements:**

**3.1.** All companies providing bonds required by this Exhibit 3; Bonding Requirements, must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide-Property-Casualty. The ratings for each company must be indicated on the documentation provided by Construction Manager to Owner certifying that all insurance and bonding requirements set forth in this Exhibit and applicable to the Contract Documents have been unconditionally satisfied. Specifically, companies providing insurance or bonds must meet the following requirements:

**3.1.1.** Best's Rating not less than A-;

**3.1.2.** Best's Financial Size Category not less than Class VII; and

**3.1.3.** Companies must be authorized to conduct and transact insurance contracts by the Texas Department of Insurance.

**3.2.** All Performance Bonds and Payment Bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

**3.3.** If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to Owner, Owner will notify Construction Manager in writing. Construction Manager must promptly obtain a new policy or bond issued by an insurer/surety acceptable to Owner and submit evidence to Owner of its compliance with these conditions.

**4. Failure to Comply.** Construction Manager's failure to comply with all bonding requirements set forth in this Exhibit 3; Bonding Requirements and applicable to the Contract Documents will not relieve Construction Manager from any liability under the Contract Documents or be construed to conflict with or limit Construction Manager's indemnification obligations under the Contract Documents



## **Exhibit 1; Mandatory Federal Agreement Provisions (Non-Federal)**

**Mandatory Federal Agreement Provisions (Non-Federal).** During the performance of this Contract, Construction Manager, for itself, its assignees, and successors in interest (hereinafter referred to as the “Construction Manager”) agrees as follows:

- 1) **General Statement:** Federal laws and regulations require that recipients of federal assistance (sponsors) include specific contract provisions in certain contracts, requests for proposals or invitations to bid. The number of mandatory provisions applicable to a specific transaction depends on whether it is federally funded. Federally funded transactions are subject to significantly more mandatory provisions. However, certain provisions must be included in all sponsor contracts, requests for proposals or invitations to bid, regardless of whether or not the transactions are federally funded. This requirement was established when a sponsor accepted the Airport Improvement Program (AIP) grant assurances. Under such federal laws and regulations, Owner is deemed a sponsor and subject to their requirements.
- 2) **FAA Publication:** These Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors have been prepared in an attempt to comply with the FAA’s Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors, which may be found at [http://www.faa.gov/airports/aip/procurement/federal\\_contract\\_provisions/#allContracts](http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/#allContracts). To the extent there is a conflict between these provisions and the requirements of the FAA document, the FAA document controls.
- 3) **Construction Manager Obligations:** In performing under this Agreement/Contract, Construction Manager:
  - a) (including all subcontractors) must insert these Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors in each lower tier contract (e.g. subcontract or sub-agreement);
  - b) must incorporate these Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors for work done under any purchase orders, rental agreements and other agreements for supplies or services; and
  - c) is responsible for compliance with these Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors by any subcontractor, lower-tier subcontractor or service provider.
- 4) **Conflicts:** To the extent that any local or state provision conflicts with, or alters, a federal law or regulation applicable to this Agreement/Contract and the solicitation under which it was awarded, the federal law or regulation takes precedence.
- 5) **Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors:** Construction Manager must comply with the following Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors:
  - a) **General Civil Rights:**

- i) Construction Manager agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.
  - ii) This provision binds Construction Manager from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
- b) **Title VI Solicitation Notice:** Owner, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- c) **Compliance with Regulations:** Construction Manager will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- d) **Non-discrimination:** Construction Manager, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Construction Manager will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- e) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Construction Manager for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Construction Manager of Construction Manager's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- f) **Information and Reports:** Construction Manager will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of Construction Manager is in the exclusive possession of another who fails or refuses to furnish the information, Construction Manager will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- g) **Sanctions for Noncompliance:** In the event of Construction Manager's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such

contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- i) Withholding payments to Construction Manager under the contract until Construction Manager complies; and/or
  - ii) Cancelling, terminating, or suspending a contract, in whole or in part.
- h) Incorporation of Provisions:** Construction Manager will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Construction Manager will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Construction Manager becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Construction Manager may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, Construction Manager may request the United States to enter into the litigation to protect the interests of the United States.
- i) Non-Discrimination Statutes:** During the performance of this contract, Construction Manager, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
  - 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
  - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
  - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
  - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain

testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**j) Federal Fair Labor Standards Act (Federal Minimum Wage):**

- i) All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.
- ii) Construction Manager has full responsibility to monitor compliance to the referenced statute or regulation. Construction Manager must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**k) Occupational Safety and Health Act of 1970:** All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Construction Manager must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Construction Manager retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Construction Manager must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**Exhibit 2; Supplemental Provisions**

**A. Definitions and the Application of Definitions:** When used in the Contract Documents, the following capitalized terms have the following meanings:

- 1) *Allowance* means a sum of money set aside in the Contract Documents for the exclusive use of Owner for costs related to the Project it determines should be paid using Allowance monies. The use of Allowance monies is entirely within Owner’s discretion and those monies are not intended for use to pay costs for which Construction Manager is at risk (e.g. Cost of the Work and Construction Manager’s Contingency). Owner may establish one or more Allowances for the Project and may include them in any Contract Document it deems appropriate. Allowance monies may be reflected in the dollar value attributed to a particular Contract Document but will not be part of a GMP or CGMP. For instance, a CGMP Amendment executed by Owner and Construction Manager for Component 1 of the Project that contains a \$300,000 Construction Manager’s Contingency and a \$200,000 Allowance may reflect its values as follows:

<b>Category</b>	<b>Value</b>
Component Guaranteed Maximum Price	\$11,800,000 (including \$300,000 Construction Manager’s Contingency and an allocated portion of Construction Manger’s Fee)
Owner’s Allowance	\$200,000
<b>Total Dollar Value of CGMP Amendment</b>	\$12,000,000

- 2) *CGMP* means that portion of a CGMP Amendment that establishes the not to exceed amount payable to Construction Manager under it and includes Construction Manager’s Fee allocated to the CGMP Amendment, any Construction Manager’s Contingency and the Cost of the Work included in it, and excludes any Owner Allowance contained in the CGMP Amendment.
- 3) *Component* means a designated portion or part of the Project (and the Work associated with it) that Construction Manager proposes and Owner approves will be built in accordance with a CGMP Amendment.
- 4) *Construction Cost Budget* means the maximum monetary amount allocated to the construction of the Project and includes Construction Manager’s General Conditions and Fee, the Pre-Construction Phase Services Budget, the Cost of the Work and any Construction Manager’s Contingencies. Construction Cost Budget does not include any Owner Allowances established in the Contract Documents. The parties intend to establish the Construction Cost Budget during the first phase of Pre-Construction Phase Services.
- 5) *Construction Documents* means the Drawings, Specifications and other documents issued to build the Project. Construction Documents become part of the Contract Documents when listed in the Contract or any Amendment. Construction Documents may be listed for the Project as a whole or for Components of the Project.
- 6) *Construction Manager’s Contingency:*
- a) means a sum included in the GMP or a CGMP which is not allocated to any item of the Cost of the Work established for Construction Manager’s use and as may be required:
    - i) for costs incurred in the Work from unforeseen causes or details that should have been anticipated by Construction Manager at the time of Owner’s approval of the GMP or a CGMP; or
    - ii) to cover any excess of the amount bid by a Subconsultant/Subcontractor over the amount for that Work in the GMP or applicable CGMP.
  - b) may be included in the GMP Amendment or in one or more CGMP Amendments, at Owner’s discretion.
  - c) is specifically intended to cover contingencies that may arise because of a GMP or CGMP provided by Construction Manager and accepted by Owner when the Design Documents for

the applicable Work were not at 100% or address other potential contingencies even when the GMP or CGMP was based on 100% Construction Documents.

- d) is intended for use to fund increases in the Cost of the Work (and no other elements of compensation under the Contract Documents) identified through the refinement, development and completion of the applicable Construction Documents or procurement of the applicable Work/Component.
  - e) will be negotiated between the parties and must reflect the risk inherent in the state of completion of the applicable Construction Documents at the time the GMP proposal or CGMP proposal is submitted.
  - f) is specifically not to be used for Construction Manager/Subconsultant/Subcontractor rework, unforeseen conditions, cost increases caused by lack of coordination or communication with Architect or Owner, to correct errors or omissions in the Construction Documents, or similar matters.
  - g) Throughout the Construction Phase, Construction Manger must maintain detailed documentation concerning its use of Contingency and must track that use accordingly to line items in the Cost of the Work to which Contingency monies were transferred. Owner may, at any time, request access to Construction Manager's Contingency file to determine if Construction Manager has been using Contingency monies appropriately under the Contract Documents. If Owner determines that Contingency monies have been misused, it will be entitled to deduct them from future progress payments, redeposit them into the applicable Construction Manager's Contingency or transfer them to any Owner Allowance existing under the Contract Documents.
  - h) Any balance in Construction Manager's Contingency remaining at the end of a CGMP (if requested by Owner) or at the end of the Project must be returned to Owner as savings.
- 7) *Day(s)* means calendar days.
- 8) *GMP* means that portion of the GMP Amendment that establishes the not to exceed amount payable to Construction Manager under it and includes Construction Manager's Fee, any Construction Manager's Contingency and the Cost of the Work, and excludes any Owner Allowance contained in the GMP Amendment.
- 9) *Modification* means (1) an Amendment to the Contract; (2) a Change Order; or (3) a Construction Change Directive.
- 10) *Person* means individuals, partnerships, agents, associations, corporations, limited liability companies, firms or other forms of business enterprises, trustees, executors, administrators, successors, permitted assigns, legal representatives and/or other recognized legal entities.
- 11) *Project* means the new addition to the southeast corner of Terminal D that:
- a) will be approximately 3 levels and 150,000 square feet;
  - b) is an extension of Terminal D;
  - c) is expected to accommodate 4 swing gates, serving both domestic and international flights, with 2 wide body aircraft, 4 narrow body aircraft or 4 regional jets;
  - d) may include other support equipment such as: 3 Baggage Handling System (BHS) makeup units tied in to the existing BHS at Terminal D; Passenger Boarding Bridges with associated ground support equipment, to include preconditioned air units (PCAs), ground power units (GPUs), 400 Hz; aircraft auto-docking equipment and new jet fuel pits; and
  - e) will also include the reconfiguration of an office space at the southwest corner of Terminal D.<sup>1</sup>
- 12) *Subcontract(s)* means a contract or other document that is a contractual agreement between 2 Persons at any tier under Construction Manager for the provision of Work and includes, for instance: [i] a Subcontract

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<sup>1</sup> The definition of Project is a preliminary one and ultimately depends on the Project as designed and represented in 100% issued for Construction Documents. The preliminary definition does not preclude Board from modifying the design so that it includes other infrastructure components not currently identified in the definition.

between Construction Manager and its Subcontractor; and [ii] a Subcontract between a Construction Manager Subcontractor and its Sub-subcontractor, and so on.

- 13) *Subconsultant(s)/Subcontractor(s)* means a Person (whether as an independent contractor or agent), at any tier (e.g. Sub-subcontractor), that is performing Work, whether under a written Subcontract or otherwise. Each Subconsultant/Subcontractor must be lawfully licensed, if required, in the jurisdiction where the Project is located.

**B. Contract Documents/Order of Precedence.**

1) **Contract Documents:** The Contract is the following documents (“Contract Documents”):

- a) Amendments/Modifications to Contract (AIA Document A133-2009; Standard Form of Contract Between Owner and Construction Manager where the basis of payment is the Cost of the Work Plus Fee with a Guaranteed Maximum Price [“Contract”]);
- b) Contract;
- c) Amendments/Modifications to General Conditions (AIA Document A201-2007; General Conditions of the Contract for Construction [“General Conditions”]);
- d) General Conditions;
- e) Amendments/Modifications to Exhibits to Contract;
- f) Exhibits to Contract:
  1. Exhibit 1; Mandatory Federal Contract Provisions;
  2. Exhibit 2; Supplemental Provisions;
  3. Exhibit 3; Insurance and Bonding Requirements;
  4. Pre-Con Amendments<sup>2</sup>; and
  5. GMP Amendment or CGMP Amendments<sup>3</sup>.

2) **Order of Precedence.** If there is a conflict, the Contract Documents will take precedence in this order:

1. Exhibit 1; Mandatory Federal Contract Provisions;
2. Guaranteed Maximum Price Amendment/Component Guaranteed Maximum Price Amendments in reverse chronological order;
3. Pre-Con Amendments in reverse chronological order;
4. Exhibit 2; Supplemental Provisions; and
5. The remainder of the Contract Documents in the order listed in the Clause entitled “Contract Documents”, with the Exhibits to the Contract taking precedence sequentially by Exhibit number and Amendments/Modifications taking precedence reverse chronologically.

**C. Owner’s Designated Representative; Limitation on Authority; Designee(s).**

1) **Governmental Entity.** Owner is a governmental entity under Texas law and must follow Applicable Laws to take certain actions, including actions that:

- a. are contractually binding;
- b. modify the Contract Documents;
- c. modify the Work;
- d. increase/decrease the compensation payable under the Contract Documents; or
- e. alter any other terms of the transaction embodied within the Contract Documents.

2) **Limited Authority.** Accordingly, Owner’s Designated Representative (and other Owner representatives/designees) may not be authorized to modify the Contract Documents without

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<sup>2</sup> 1 or more Pre-Con Amendments may be executed between Owner and Construction Manager and will be listed in chronological order.

<sup>3</sup> If Owner decides to construct the Project in Components, successive CGMP Amendments will be executed and included as Contract Documents in chronological order (CGMP Amendment No. 1 for Component No. 1, etc.).

Owner's legislative approval. Construction Manager is deemed to understand all legal and Owner limitations on those individuals representing the Owner under this Contract.

- 3) **Designee(s).** Owner's Designated Representative will be an authorized representative of the Owner's Procurement and Materials Management Department.

**D. Provision of Information; Allocation of Risk.**

- a. **General.** Owner or other Persons may furnish information; available property, boundary, easement, right-of-way, topographic and utility surveys; drawings; specifications; special data and conditions and other special investigations of the Project site, as requested by Construction Manager or required by the Contract Documents, that is reasonably necessary for the Project.
- b. **No Warranty or Representations.** Owner makes no warranties, guarantees or representations as to the accuracy, completeness, or suitability of any information provided to Construction Manager by Owner or other Persons and all such warranties, guarantees and representations are disclaimed. Construction Manager bears responsibility for and agrees it may not recover damages relating to any claim arising from any inaccuracies in such information.
- c. **Information Concerning Utilities, Facilities and Structures.** Owner does not guarantee the accuracy or the completeness of any location information relating to existing utility services, facilities or structures that may be shown on the drawings or encountered in the Work. Any inaccuracy or omission in such information will not relieve Construction Manager of the responsibility to locate and protect such existing utility services, facilities and structures from damage or the service from unscheduled interruption.
- d. **Construction Manager Responsibility.** Before commencing the Construction Phase, Construction Manager represents and warrants that it will:
  - i. carefully inspect and examine all matters, conditions, and circumstances affecting Construction Manager's proper and timely performance of the Work, including, without limitation, the Contract Documents and any other documents and information provided to it by Owner or any other Person, and fully inform itself as to all conditions and matters which may in any way affect the Work or Cost of the Work;
  - ii. visit the Project site, take field measurements, verify field conditions, satisfy itself as to the local conditions at the Project site and surroundings, the character, quality and quantities of Work to be performed, materials to be furnished, the requirements of the Contract Documents and all Applicable Laws;
  - iii. inform itself by its independent research, tests and investigations of the difficulties to be encountered and judge for itself the accessibility of the Work and all attending circumstances affecting the Work, the cost of doing the Work, or time required for its completion and obtain all information required to make intelligent and informed decisions concerning the Project; and
  - iv. it is solely responsible for all assumptions, deductions or conclusions that it may make or obtain from its examination of any information provided by Owner or other Persons concerning the Project.

**E. Component Work Provisions:** The provisions in this clause will apply if Owner elects to construct the Project in Components.

- 1) If Owner decides it will construct the Project in Components, it will advise Construction Manager.
- 2) As part of the Pre-Construction Phase Services, Owner and Construction Manager will negotiate a Pre-Con Amendment that may require Construction Manager to, after working with the Architect, to propose a plan for segregating the Work into Components.
- 3) Based upon the agreed upon Component plan and upon Owner's directives, the parties will implement the plan and address construction of the Components through 1 or more of the following:



- a) 2 or more CGMP Proposals; and
- b) 2 or more CGMP Amendments.

These documents will address the Components to be constructed, applicable schedules and budgets, whether any Component will be subject to a Substantial Completion Date, liquidated damages and other appropriate subjects relating to the particular Component at issue.

- 4) The sum of the CGMP's in all CGMP Amendments presented to Owner must be within the Construction Cost Budget. After the agreement of the parties on a specific CGMP Amendment, during the Construction Services phase of the Project, Construction Manager will package all Work into Subcontracts and Purchase Orders that will be competitively awarded pursuant to the Contract Documents. Construction Manager will schedule the construction of each Component and the Work required by the Contract Documents to be performed and fully complete consistent with the Project Schedule. Construction Manager will be at risk to provide construction management services for all Work required for the Project within the stated cost limitations of the Construction Cost Budget, in accordance with each CGMP Amendment and within all Component and Project Substantial and Final Completion Dates.
  - 5) Construction Manager agrees to complete the construction of the Component in accordance with the agreed upon CGMP Schedule, Substantial Completion Date and Final Completion Date, as applicable. Construction Manager acknowledges that failure to complete the Project or any Component within the construction time set forth in the approved schedules shall result in substantial damages to the Owner sufficient to justify the imposition of liquidated damages.
  - 6) A CGMP will include an agreed upon portion of Construction Manager's General Conditions and Fee and any proposed Construction Manager's Contingency Fund which is included.
  - 7) At Owner's election, the Work may be completed through multiple CGMPs which, with the final CGMP, may be rolled into one GMP.
- F. **Liquidated Damages:** Liquidated damages applicable to the GMP Amendment or any CGMP Amendment will be established in the applicable amendment.

**G. Record Documents:**

- 1) **Definition:** "Record Documents" mean the Contract Documents and other materials maintained by Construction Manager that document the Project, including the postings and markings on appropriate Contract Drawings that record the as-constructed conditions of the Work and all changes made during construction.
- 2) **Location/Access:** Construction Manager must keep a complete and accurate record of all changes or deviations from the Contract Documents. The Record Documents, including the record set of prints of the Contract Drawings, shop drawings, and Specifications must be kept on site. Owner will have access to review Record Documents for completeness and accuracy.
- 3) **Ongoing Recordation:** During the Work's progress, Construction Manager must require the plumbing, air conditioning, heating, ventilating, elevator, and electrical Subcontractors to record on their field sets of drawings the exact locations, as installed, of all conduit, pipe, and duct lines, whether concealed or exposed, which were otherwise not installed exactly as shown in the Contract Drawings. Construction Manager must also record all drawing revisions that have been authorized by change order that affect wall or partition locations, door and window locations, and other template changes. The exact routing of conduit runs must be shown on these drawings.
- 4) **"As Built Requirements":** Each Contract Drawing must be noted "As Built" and must bear the date and name of the Subcontractors that performed the Work. CAD files of record drawings must be updated by Construction Manager to reflect their "As Built" condition. These drawings must also be provided in the portable document format (.PDF). Where the Work was installed exactly as shown on the Construction Documents, the sheets should not be disturbed except as noted above.

- 5) **Construction Manager Review:** Construction Manager must review the completed “As-Built” drawings and ascertain that all data furnished on the drawings are accurate and truly represent the Work as it was installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the Work, Construction Manager must furnish true elevations and locations, all properly referenced by using the original bench mark for the Project.
- 6) **Submittal to Owner/Architect:** Construction Manager must provide to Owner in electronic format as prescribed by the DFW CADD Standards 1 complete draft set of Record Documents and the BIM for the Project (LOD 500) with complete building report attributes on or before submitting its Final Application for Payment.
- 7) **Owner/Architect Review.** Owner/Architect will review these for completeness within 15 Days of receipt and provide Construction Manager with comments.
- 8) **Final Versions.** Construction Manager must then produce a final set of Record Documents in electronic format as prescribed by the DFW CADD standards within 15 Days of receipt of comments from Owner on which Construction Manager must certify the completeness and accuracy of the Drawings and Shop Drawings by endorsing each drawing sheet with the following statement:

**“To the best of Construction Manager’s knowledge and belief, the as-built conditions shown on this drawing constitute an accurate and complete depiction of the way this portion of the Work was actually installed during performance of Contract No. \_\_\_\_\_.**

\_\_\_\_\_

**(Insert name of Construction Manager)**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

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

**(Signature of Construction Manager’s representative and date)”**

- 9) **Final Record Documents/Final Pay Application.** Construction Manager may not submit its final Pay Application until it has provided to Owner the final Record Documents and all AutoCAD Drawings in a format acceptable to Owner. The final Record Documents must be arranged according to the Drawing and Specifications numbering system used in the Contract Documents. Construction Manager must provide an index and cross-referenced listing of each drawing sheet in the final Record Documents.

**H. Administrative Records:**

- 1) Construction Manager must maintain at the Project site, on a current basis, files and records, such as, but not limited to, the following:
  - Subcontracts or Purchase Orders
  - Shop Drawing Submittal/Approval Logs
  - Equipment Purchase/Delivery Logs
  - Contract Drawings and Specifications with Addenda
  - Warranties and Guarantees
  - Cost Accounting Records:
    - Labor Costs
    - Material Costs
    - Subcontractor Payment Exception Report
    - Equipment Costs
    - Cost Proposal Requests

- Payment Request Records
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- "As-Built" Marked Prints (in electronic format as directed by the Project Director)
- Operating & Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- EPMS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- Project Manual

2) These Project records must be available always to Owner, Owner's Representative and the Architect-Engineer for reference or review.

**I. Warranty and Guaranty:**

**a. Construction Manager's General Warranty and Guaranty.** Construction Manager warrants to Owner:

- i. that all Work is executed in accordance with the Contract Documents, complete in all parts and in accordance with approved practices and customs, and is of the required finish and workmanship in the Contract Documents;
- ii. that, unless otherwise specified in the Contract Documents, all materials and equipment incorporated into the Work under the Contract Documents are new, free from any defect in equipment, material, or design furnished, or workmanship performed.

**b. Warranty Period.**

- i. Construction Manager must repair or replace all defects in materials, equipment or workmanship appearing within 1 year from the date of Substantial Completion of the Work.
- ii. If construction of the Project occurs in Components, then the warranty period for all Work performed for each Component will begin on the date of Substantial Completion of the last Component (e.g. Substantial Completion of the Project as a whole).
- iii. The warranty period for Work repaired or replaced will run for 1 year from the date of repair or replacement.

**c. Events Not Affecting Warranty.** Construction Manager's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents

or relieve Construction Manager from its obligation to perform the Work in accordance with the Contract Documents:

- i. observations by Owner;
- ii. payment of any progress payment or Final Payment by Owner;
- iii. The issuance of any Certificate of Substantial Completion;
- iv. Use or occupancy of the Work or any part of it by Owner;
- v. Any written acceptance by Owner or any failure to do so;
- vi. Any review of a Shop Drawing or Submittal; or
- vii. Any inspection or test.

**d. Separate Warranties.**

- i. If a piece of equipment or similar item of the Work for which the Contract Documents require a separate warranty is placed in continuous service before Substantial Completion of the component of Work in which the piece of equipment or similar item is installed, the warranty period for that equipment or similar item will not begin until Substantial Completion, regardless of any warranty agreements in place between Subcontractors or similar Persons and Construction Manager. Owner will certify the date of service commencement in the applicable Substantial Completion Certificate.
- ii. In addition to Construction Manager's warranty and duty to repair, Construction Manager expressly assumes all warranty obligations required under the Contract Documents for specific building components, systems and equipment.
- iii. Construction Manager may satisfy any such obligation by obtaining and assigning to Owner a complying warranty from a manufacturer, supplier, Subcontractor or similar Person. Where an assigned warranty is tendered and accepted by Owner that does not fully comply with the requirements of the Contract Documents, Construction Manager remains liable to Owner on all elements of the required warranty not provided by the assigned warranty.

**J. Diversity (Non-Federal).**

- 1) **Equal Opportunity.** In accordance with the policy statement in Owner Resolution No. 80-095, Construction Manager agrees that it will take all necessary action to ensure that, in performing Work under the Contract Documents, it and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or physical handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements.
- 2) **Non-Discrimination.** Construction Manager agrees that it will take all necessary actions to ensure that, regarding its performance under the Contract Documents, it will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements.

**K. Minority Business Enterprise (MBE) Program:**

**(UPDATED 11/01/2013)**

**Notification is hereby given that a MBE Contract specific goal has been established for this Contract. The Contractor/vendor has committed to percent (35%) MBE participation of the total dollar value of this Contract including any change orders and/or modifications throughout the term of this Contract/agreement. The commitment is a contractual commitment upon execution of the Contract.**

**a. GENERAL REQUIREMENTS**

- i. It is the policy of the Dallas/Fort Worth International Board of Directors ("Board") to support the growth and development of Minority Business Enterprises ("MBEs") that can successfully

- compete for Airport construction prime contracting and subcontracting opportunities.
- ii. A “Contractor” is defined as one who participates, through a Contract or any other contractual agreement. For purposes of these Provisions, a Contractor is one who seeks to do business with the Board by submission of a bid or proposal on any such Contract or subcontract. A Contractor includes but is not limited to a Contractor, consultant, developer or vendor.
  - iii. It is the policy of the Board to ensure non-discrimination in the award and administration of Board Contracts. Consequently, the Contractor must fully comply with the requirements of the Board’s Minority Business Enterprise Program Policies and Administrative Procedures in proposing and performing hereunder.
  - iv. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of the Board’s Policies. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the Board deems appropriate. The Contractor shall insert an Article containing all of the provisions of this Section, including this paragraph, in all subcontracts hereunder, except altered as necessary for the proper identification of the contracting parties and the Board under this Contract.
  - v. The Business Diversity & Development Department (“BDDD”) is responsible to ensure compliance with the Board’s MBE Policy and Administrative Procedures. BDDD has the mission to proactively facilitate and maximize business and capacity building opportunities for MBEs by collaborating with internal customers and implementing effective innovative programs and approaches for prime and subcontracting.
  - vi. The Contractor specifically agrees to comply with all applicable provisions of the Board’s Policies and any amendments thereto. MBE and Non-MBE subcontractors also agree to comply with all applicable provisions of the Board’s MBE Policy and Administrative Procedures (“Policies”).
  - vii. The Contractor shall maintain records, as specified in the Audit and Records Section of the Special Provisions in the Contract, showing:
    - 1. Subcontract/supplier awards, including awards to MBEs;
    - 2. Specific efforts to identify and award such Contracts to MBEs, such as when requested copies of executed Contracts with MBEs to establish actual MBE project participation.

**b. ADMINISTRATIVE REQUIREMENTS**

- i. All Contractors are charged with knowledge of and are solely responsible for complying with each requirement of the Policies in making a bid and, if awarded a Contract, in performing the work described in the Contract documents. These instructions are intended only to generally assist the Contractor in preparing and submitting a compliant bid. Should any questions arise regarding specific circumstances, Contractors must consult with the BDDD office at 972-973-5500.
- ii. The Contractor shall appoint a high-level official to administer and coordinate the Contractor’s efforts to carry out its MBE contractual commitments.
- iii. The Contractor agrees to submit monthly reports of payments and subcontract and/or supplier awards to MBEs and Non-MBEs in such form and manner and at such times as the Board shall prescribe.
- iv. The Contractor shall provide BDDD access to all books, records, accounts and personnel in accordance with the Audit and Records section of these Special Provisions. Such access will be used for, among other purposes, determining MBE participation and compliance with the Policies. All Contractors may be subject to interim and post-contract MBE audits. Audit determination(s) regarding Contractor’s compliance with the Policies may be considered and have a bearing on consideration of the Contractor for award of future Contracts.

**c. GOALS AND GOOD FAITH EFFORTS**

- i. Each Contractor must comply with the terms and conditions of the Policies in making its bid or proposal and, if awarded the Contract, in performing all work thereunder. A Contractor’s failure to comply with any Rules or Regulations promulgated pursuant thereto, or any additional requirements contained herein may render a bid or proposal non-responsive and may constitute cause for rejection.
  - 1. Responsive; compliance with requirements. If a bid/proposal meets the contract-specific goal or shows an adequate good faith effort in accordance with the Policies,

then BDDD shall notify the procuring department to regard the bid/proposal as responsive.

2. Non-Responsive; failure to meet requirements. If a bid/proposal subject to a contract-specific goal does not meet the goal or show an adequate good faith effort, or provide the necessary documentation or forms outlined in the Policies, then BDDD shall notify the procuring department to regard the bid/proposal as non-responsive. Such determination shall result in no further consideration of the bid/proposal by the Airport.
  - a. Informal meeting. If BDDD finds the bid/proposal non-responsive in accordance with the above, the non-responsive bidder/proposer may request an informal meeting with the Vice President or designee within two (2) business days from the date that the Airport notifies the bidder/proposer of the inadequacy of the proposal. Such meeting shall be scheduled by BDDD. All deficiencies in the bid/proposer shall be explained to the bidder or proposer at such meeting after which the bidder/proposer shall be allowed to clarify the original documentation submitted. BDDD will at no time, however, allow additional information, documentation, certification certificates, subcontractors, joint venturers, suppliers, manufacturers, manufacturer's representatives or brokers that may later be added to the contract or to the original participation submitted at the time of the bid or proposal to be counted toward meeting of the project goal. If after this informal meeting the Vice President still finds the bid or proposal to be non-responsive, the Vice President or designee's decision shall stand with no further consideration.
  - ii. Under the Policies, BDDD establishes a contract-specific goal for each Contract. The specific goal for the Contract is stated in the Advertisement and Invitation to Bid. In order to comply with the bid/proposal requirements of the Policies, a Contractor must either meet the MBE Contract specific goal or demonstrate that the Contractor has made sufficient good faith efforts to meet the specific goal. If a Contractor does not meet the MBE Contract specific goal, it shall nevertheless be eligible for award of the Contract if it can demonstrate to BDDD that it has made a good faith effort to meet the specific goal. This good faith effort documentation must be submitted with the Contractor's bid or proposal.
  - iii. A Contractor cannot require exclusive subcontracting or teaming arrangements or agreements with subcontractors.
  - iv. For Contracts awarded using the procurement methods of Indefinite Delivery, Job-Order-Contract, Construction Management-at-Risk or Design Build, the Vice President of BDDD may determine the requirements to address the Contract goal by means of a Compliance Plan for utilization of MBEs on such Contract, or for alternative demonstration of good faith efforts by the Proposer. The development, scope and utilization of such compliance plans shall be addressed in a separate document.
  - v. In evaluating a Contractor's good faith efforts submission, BDDD will only consider those documented efforts that occurred prior to the good faith effort submission.
  - vi. The submission of good faith efforts documentation is a matter of responsiveness and shall include a specific response to each of the following factors with the bid or proposal. In addition, a Contractor may supplement its responses to include any additional information with the bid or proposal the Contractor believes may be relevant. Failure of the Contractor to demonstrate adequate good faith efforts as to any one of the following categories shall render the overall good faith showing insufficient and the bid/proposal non-responsive. The required MBE good faith efforts are set forth below:
    1. Whether the Contractor attended any pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities for MBE participation (acceptable documentation shall include copies of the meeting sign-in sheets with Contractor name noted as signed-in);
    2. Whether the Contractor advertised in general circulation, trade association, and/or MBE focused media concerning subcontracting and supplier opportunities (acceptable documentation shall be copies of advertisement, newspaper page where advertisement was posted or print media confirmations);
    3. Whether the Contractor provided written notice via email or facsimile to a reasonable number of MBEs and/or contacted a reasonable number of MBEs via telephone about

the subcontracting/supplier opportunities. A “reasonable number of MBEs” is based on the number of all MBEs available in the areas of subcontracting or supplier opportunities (acceptable contact modes for solicitation shall be letters, facsimile transmissions, telephone communications and email);

4. Whether the Contractor solicited the MBEs at least five (5) business days prior to bid submission, exclusive of the day the bids are opened, to allow MBEs to participate effectively. Also, whether the Contractor followed up those initial solicitations of interest by contacting MBEs at least three (3) business days prior to bid opening to determine with certainty whether the MBEs were interested (appropriate steps may be demonstrated by second contact attempts by letter, facsimile transmission, telephone communication or email, if bidder/proposer failed to make contact on its first attempt);
5. Whether the Contractor selected portions of the work to be performed by MBEs, in order to increase the likelihood of meeting the MBE goal including, where appropriate, breaking down the Contract into economically feasible subcontracts to facilitate MBE participation. This includes portions of the work to be performed by MBEs the Contractor would otherwise prefer to perform with its own workforce. The ability or desire of a Contractor to perform the services of a contract with its own workforce does not relieve the Contractor of the responsibility to meet the contract goal or demonstrate good faith efforts to do so (The bidder/proposer shall make a moderate and reasonable adjustment to the normal and practiced industry standard that demonstrates a reasonable willingness to divide up scopes of work to provide more opportunities for MBEs to bid/quote);
6. Whether the Contractor provided interested MBEs with adequate information about the plans, specifications, scope of work and requirements of the contract or adequate information about the locations of the plans, specifications, scope of work and requirements of the contract (such access shall be provided at least five (5) business days before bid date or proposal submission);
7. Whether the Contractor fairly investigated and evaluated the interested MBEs’ regarding their capabilities, not rejecting MBEs as unqualified without sound reasons based on a thorough investigation. Also, whether the Contractor provided verification, including a statement giving the Contractor’s reasons for its conclusion, that it rejected each non-utilized MBE because the MBE was not qualified. Qualifications must be based on factors other than solely the amount of the MBE’s bid. A Contractor may not reject a MBE as being unqualified without sound reasons based on a reasonably thorough investigation and assessment of the MBEs’ capabilities and expertise. (Appropriate steps may be demonstrated with a summary matrix that identifies all bidders/proposers, evaluation criteria, assessments, conclusions and verifications);
8. Whether the Contractor negotiated in good faith with interested MBEs, regarding price, using good business judgment and not rejecting reasonable quotes from interested MBE. Also, whether the Contractor provided written documentation why the Contractor and each of the MBEs contacted did not succeed in negotiating an agreement (Good faith negotiation shall mean scheduled meaningful discussions that demonstrably seek to find reasonable ways to utilize the MBE on the contract);
9. Whether the Contractor made efforts to assist interested MBEs in obtaining Board or Contractor-required bonding, lines of credit, insurance, etc.;
10. Whether the Contractor made efforts to assist interested MBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
11. Whether the Contractor effectively used the services of available minority and women community organizations; chambers and Contractor groups; local, state, and federal business assistance offices, and other organizations that provide assistance in the identification of MBEs (acceptable contact modes for solicitation shall be letters, facsimile transmissions, telephone communications and email, list(s) of MBEs identified, marketing brochure or flyers);
12. Whether the Contractor, if applicable, obtained written documentation from the Board’s approved Surety Support Consultant or a bona fide surety company indicating that bonding was denied prior to the MBE being rejected as a potential subcontractor for failing to obtain Contractor-required bonding. Documentation furnished by a surety company will be subject to verification by BDDD; and
13. Whether other Contractors have attained a sufficient level of MBE participation to

meet the Contract specific goal will also be taken into consideration when determining whether the Contractor has made a good faith effort.

- vii. BDDD will review not only the different kinds of efforts that the Contractor has made but also the quantity and intensity of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the goal, even if they are sincerely motivated. BDDD will also consider if, given all relevant circumstances, the Contractor's efforts could reasonably be expected to produce a level of MBE participation sufficient to meet the goal.
- viii. Whether or not the Contract specific goal has been met and/or whether there were sufficient good faith efforts is considered a matter of the Contractor's responsiveness. The requirement to submit documentation that the goal has been met or good faith efforts documentation has been submitted in the manner prescribed by BDDD is considered a matter of the Contractor's responsiveness. The Board will only award Contracts to Contractors determined to be responsive and responsible. If a Contractor fails to submit good faith efforts documentation with the bid or proposal, it waives the right to appeal the good faith efforts decision. The Vice President of BDDD or designee shall determine whether the Contractor made the required good faith efforts to meet the Contract goal and, if not, shall recommend that the Contractor be deemed non-responsive.
- ix. If a Contractor desires a review of the Vice President of BDDD's decision, it shall file a written request for final reconsideration within five (5) business days after receipt of the decision to the Reconsideration Official:

Executive Vice President  
Administration & Diversity  
DFW International Airport  
P.O. Box 619428  
DFW Airport, TX 75261-9428

As part of the reconsideration, the Contractor will have the opportunity to provide written documentation or argument concerning the issue of good faith.

- x. The Contractor has a continuing obligation as a covenant of performance to meet the MBE utilization to which it committed at Contract award, inclusive of change orders, amendments, and modifications. If the Contractor during Contract performance must replace a MBE for any reason, it must follow the provisions herein governing the substitution of MBEs and make documented good faith efforts to meet its original MBE contractual commitment.
  - 1. Such good faith efforts during Contract performance must include, but are not limited to:
    - a. Solicitation of MBEs that are certified in the applicable area of work or specialty;
    - b. Providing interested MBEs with adequate information about the plans, specifications, scope of work and requirements of the Contract;
    - c. Fairly investigating and evaluating the interested MBEs' regarding their capabilities, not rejecting MBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving the Contractor's reasons for its conclusion, that it rejected each non-utilized MBE because the MBE was not qualified. Qualifications must be based on factors other than solely the amount of the MBEs bid;
    - d. Negotiating in good faith with interested MBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested MBEs and providing written documentation why the Contractor and any of the MBEs contacted did not succeed in negotiating an agreement; and
    - e. Effectively using the services of available minority and women community organizations; chambers and Contractor groups; local, State, and Federal business assistance offices, and other organizations that provide assistance in the identification of MBEs
  - 2. A Contractor determined not to have made continuing good faith efforts to meet its MBE contractual commitments may request an administrative review and final reconsideration by the Vice President of BDDD. The Contractor may elect to meet in person to discuss whether the Contractor made continuing good faith efforts in accordance with the Policies. BDDD's determination shall be final.

**d. COUNTING MBE PARTICIPATION**



- i. BDDD will evaluate each bid or proposal to determine the responsiveness of the bid or proposal to the Policies. In determining if a Contractor's committed levels of participation meet or exceed the solicitations or the development agreement's Contract Specific Goal, BDDD shall base its determination solely on the information provided in the bid or proposal document.
- ii. Unless otherwise specified in the solicitation, all bids or proposals for the provision of Indefinite Delivery or Job-Order-Contracts for a period of time and with no delineation of the dollar amount for specific on-call projects, the Contractor shall submit only the anticipated overall percentage of MBE contractual commitment and post award, submit a completed Compliance Plan for review and approval by the Vice President of BDDD.
- iii. If a joint venture is proposed to meet the Contract Specific Goal or any portion thereof, the total value of the distinct and clearly defined portions of the work of the Contract that the MBE will perform with its own workforce; reflect its capital contribution, control, management and profits; and for which it is at risk will be counted.
- iv. When calculating participation levels, percentages and dollar amounts for each MBE, the Contractor cannot round up in determining whether or not the total of these amounts meets or exceeds the Contract Specific goal.
- v. A MBE must be certified as a MBE by a Board-approved entity and have a place of business in the Airport's market area at the time of bid or proposal submission to be counted towards meeting the Contract Specific goal. Other certifications are not acceptable.
- vi. Post award, the Contractor may count towards its MBE contractual commitment a MBE that is certified during the performance of the Contract if the MBE is added to the Contract or substituted for a MBE pursuant to section herein.
- vii. The Contractor may not count toward its MBE contractual commitment the dollar value of work performed by a MBE after it has ceased to be certified.
- viii. MBE prime Contractors can count their self-performance toward meeting the Contract Specific Goal, but only for the scope of work and at the percentage level they will self- perform.
- ix. When a MBE participates in a Contract, the Contractor shall count only the value of the work actually performed by the MBE toward MBE goals.
- x. A Contractor cannot count toward the Contract Specific Goal amounts paid to an affiliate subcontractor, as defined in 49 C.F.R. Part 16.5
- xi. The Contractor shall count the entire amount of that portion of a Contract (or other Contract not covered by this section) that is performed by the MBEs own work forces. The Contractor may count the cost of supplies and materials obtained by the MBE for the work of the Contract, including supplies purchased or equipment leased by the MBE (except supplies and equipment the MBE subcontractor purchases or leases from the prime Contractor or its affiliate).
- xii. The Contractor shall count toward the MBE goals the entire amount of fees or commissions charged by a MBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of an Board Contract, provided it determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- xiii. When a MBE subcontracts part of the work of its Contract to another firm at any tier, the value of the subcontracted work may be counted towards the MBE goal only if the MBE's subcontractor is itself a MBE. Work that a MBE subcontracts to a non-MBE firm does not count toward MBE goal.
- xiv. The Contractor will count expenditures to a MBE subcontractor toward the MBE goal only if the MBE is performing a commercially useful function on the Contract.
  1. A MBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. To determine whether a MBE is performing a commercially useful function, the Contractor must evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, the MBE credit claimed for its performance of the work, and other relevant factors.
  2. A MBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are

passed in order to obtain the appearance of MBE participation. In determining whether a MBE is such an extra participant, the Contractor must examine, among other relevant factors, similar transaction, particularly those in which MBEs do not participate.

3. If a MBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work forces, or the MBE subcontracts a greater portion of the work of a Contract then would be expected on the basis of normal industry practice for the type of work involved, the Contractor must presume that it is not performing a commercially useful function.
  4. When a MBE is presumed not to be performing a commercially useful function as provided in this section, the MBE may present evidence to rebut this presumption. BDDD may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- xv. The Contractor shall use the following factors in determining whether a MBE trucking company is performing a commercially useful function:
1. The MBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract, and there cannot be a contrived arrangement for the purpose of appearing to meet the MBE goal.
  2. The MBE must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
  3. The MBE shall receive credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
  4. The MBE may lease trucks from another MBE, including a owner-operator who is certified as a MBE. The MBE who leases trucks from another MBE shall receive credit for the total value of the transportation services the lessee MBE provides on the Contract.
  5. The MBE may also lease trucks from a non-MBE, including from an owner-operator. The MBE who leases trucks from a non-MBE is entitled to a credit only for the fee or commission it receives as a result of the lease arrangement. The MBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a MBE.
  6. For purposes of this paragraph, a lease must indicate that the MBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the MBE, so long as the lease gives the MBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MBE.
- xvi. The Contractor shall count expenditures to MBEs for materials or supplies towards the MBE goal as follows:
1. MBE Manufacturer
    - a. If the materials or supplies are obtained from a MBE manufacturer, count one hundred percent (100%) of the cost of the materials or supplies towards the MBE goal.
    - b. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
  2. MBE Regular Dealer
    - a. If the materials or supplies are purchased from a MBE regular dealer, count sixty percent (60%) of the cost of the materials or supplies towards the MBE goal.
    - b. For purposes of this section a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
    - c. A person may be a regular dealer in such bulk items as petroleum products,

steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

- xvii. With respect to materials or supplies purchased from a MBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commission charges for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, towards the MBE goal, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. However, the Contractor shall not count any portion of the cost of the materials and supplies themselves toward MBE goals.
- xviii. If a MBE subcontractor is not certified at the time of the execution of the Contract, supplemental agreement or subcontract, the Contractor may not count the firm's participation toward the MBE goal until the firm is certified. Additionally, the Contractor shall not count the dollar value of work performed under a Contract with a firm after it has ceased to be MBE certified.
- xix. The Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion.
- xx. BDDD will count MBE participation where the MBE or joint venture partner performs a portion of work on the Contract and the percentage of ownership or equity of the MBE in joint venture. BDDD will allow the joint venture to count the total dollar value of the Contract equal to the distinct, clearly defined scope of the work of the Contract that the MBE joint venture partner performs with its own forces toward the MBE commitment and for which it is at risk.
- xxi. The Contractor shall not count the participation of a MBE subcontractor toward the goal until the amount has been actually paid to the MBE.
- xxii. The following expenditures to MBE firms may also count toward the MBE goal:
  - 1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Board to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 2. The fees charged for delivery of material and supplies required on a job site (but not the cost of materials and supplies themselves) when the hauler, trucker or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - 3. The fees of commission charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**e. CERTIFICATION**

- i. In order to count the participation of MBEs towards the Contract goal, the MBE must be certified by the North Central Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council or the Women's Business Council Southwest. Other certifications are not acceptable. A minority-owned Disadvantaged Business Enterprise (DBE) that is certified by the Texas Unified Certification Program may be counted towards meeting the MBE goal.
- ii. In addition to having a valid certification from one of the entities listed above, the MBE must have a place of business in the Airport's market area at the time the firm is submitted for credit towards meeting the MBE goal, which is defined as the North Texas Commission twelve-county area of Dallas, Tarrant, Collin, Delta, Denton, Ellis, Hunt, Johnson, Kaufman, Parker, Rockwall, and Wise counties. The MBE must provide any requested documentation to establish its place of business to the satisfaction of BDDD.
- iii. The Contractor must submit to BDDD a properly completed MBE Certification Certificate or

letter, with all required attachments, for all MBEs proposed to be utilized as subcontractors or suppliers to meet the Contract goal at the time of bid/proposal submission. The Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion. Such rejection shall be in writing and state the reason(s) for the rejection. A Contractor whose proposed certified firm is rejected for goal credit may request reconsideration of the rejection to BDDD in writing. The request for reconsideration must be received by BDDD within five (5) business days of the notification of rejection. BDDD's decision on the request shall be final.

- iv. A firm must be certified as a MBE at the time of bid or proposal submission to be counted towards meeting the goal for purposes of determining Contract award.
- v. Post award, a Contractor may count MBEs certified during the performance of the Contract towards its MBE contractual commitment once documentation confirming such certification is submitted to BDDD.
- vi. BDDD maintains a current listing of certified MBEs. Bidders and proposers must use its Directory to assist them in locating MBEs for the work required on the Contract. The MBE Directory is located at:  
<https://dfw.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=dfw&XID=5886>
- vii. MBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.

f. MBE UTILIZATION FORMS AND RELATED DOCUMENTATION

- i. Each Contractor must submit for all solicitations, bids or proposals, completed MBE utilization forms as outlined below to be considered responsive.
  - 1. Request for Bid (RFB) for Construction Projects:
    - **Commitment to MBE Participation** must be submitted at the time of bid submission.
    - **Preliminary Schedule of Subcontractors** must be submitted at the time of bid submission.
    - **Certification Certificates**. Copies of corresponding certification certificates must be attached to the Preliminary Schedule of Subcontractors at the time of bid submission.
    - **Good Faith Effort Documentation**. If the Contractor fails to meet the MBE goal, this documentation must be submitted at the time of bid submission.
    - **Final Schedule of Subcontractors** shall be submitted within three (3) business days from the date of the bid opening or with the bid verification.
    - **Intent to Perform as a Subcontractor** A signed and executed form for each MBE subcontractor identified on the Final Schedule of Subcontractors shall be submitted at the time of bid submission.

OR

- 2. Request for Proposals (RFP) or Request for Qualifications (RFQ):
  - **Commitment to MBE Participation** must be submitted at the time of proposal submission.
  - **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission
  - **Certification Certificates** Copies of corresponding certification certificates must be attached to the Preliminary Schedule of Subcontractors.
  - **Good Faith Effort Documentation**. If the Contractor fails to meet the MBE goal, this documentation must be submitted at the time of proposal submission.
  - **Final Schedule of Subcontractors** shall be submitted with the best and final offer.
  - **Intent to Perform as a Subcontractor** A signed and executed form for each MBE subcontractor identified on the Final Schedule of Subcontractors shall be submitted with the best and final offer.

OR

- 3. Request for Price Proposal for a task/delivery order under an Indefinite Delivery Contract:
  - **Commitment to MBE Participation** must be submitted at the time of bid/proposal submission.

- **Compliance Plan**: Post Contract award, submit to BDDD for review and approval.
  - **Final Schedule of Subcontractors**. At the time that a delivery order price proposal is requested, the Final Schedule of Subcontractors must be submitted with the price proposal submission.
  - **Certification Certificates** Copies of corresponding certification certificates must be attached to the Final Schedule of Subcontractors.
  - **Intent to Perform as a Subcontractor** A signed and executed form for each MBE subcontractor identified on the Final Schedule of Subcontractors must be submitted with the final agreed-upon price proposal for each delivery order.
- ii. Any commitments to meet the MBE goal must be detailed on the **Commitment to MBE Participation** form included with the bid/proposal. This commitment includes the following:
- "The Contractor must maintain the MBE participation level to which it committed at Contract award throughout the performance of the Contract. A Contractor may not terminate for convenience a MBE subcontractor (or an approved substitute MBE firm) and then perform the work of the terminated subcontract with its own workforces, those of an affiliate, or any other firm without the prior written consent from BDDD. When a MBE subcontractor is terminated, or fails to complete its work on the Contract for any reason, the Contractor is required to make good faith efforts to substitute another MBE to fulfill its MBE contractual commitment."*
- iii. The **Schedule of Subcontractors** form must list all subcontractors the Contractor intends to use in performing the work of the project, including non-MBEs, and detail the preliminary and/or final percentage and dollar commitment of the Contractor to MBE participation. Only MBEs identified and the levels of participation listed for each at the time of bid submission will be considered in determining whether the Contractor has met the goal. All MBEs must be properly certified under the guidelines of the CERTIFICATION section. Submission of the **Intent to Perform as a Subcontractor** form for each MBE shall constitute a representation by the Contractor to the Board that it believes the MBE to be certified as a MBE to perform the work as designated. It shall also represent a commitment by the Contractor that if it is awarded the Contract, it will enter into a subcontract with the MBE for the work described at the approximate price and percentage set forth in the **Intent to Perform as a Subcontractor** form.
- iv. If the MBE's information or status changes after the form has been submitted but prior to award of the Contract, the Contractor must immediately notify BDDD of the change and a written explanation for the change by submitting a **Request for Approval of Change to Final Schedule of Subcontractors** form. No change in MBE participation after bid submission, but prior to Contract award, may change, or be deemed to change, the Contractor's submitted bid amount. The Modification and Substitutions section of the Policies shall govern the modifications and substitutions of the MBEs that occur after Contract award.
- v. Except as authorized by BDDD, the Contractor shall enter into formal agreements with the MBEs listed on the **Final Schedule of Subcontractors** and **Intent to Perform as a Subcontractor** forms within ten (10) business days after receipt of the Contract executed by the Board or Notice to Proceed executed by the Board. If requested, the Contractor must provide the BDDD copies of those agreements within five (5) business days of the written request.
- vi. Alternative **Compliance Plan**
1. When the project design is not complete or at a level of completeness allowing for final competitive pricing proposals, BDDD's may, in its sole discretion, require bidders or proposers for a construction or construction-related professional services Contract to submit a Compliance Plan in lieu of the above forms. The Compliance Plan shall be developed in accordance with the following requirements:
    - a. BDDD may require separate goals for project professional services and for project construction services, or a project aggregate goal. The Compliance Plan may be required to address the project professional services goal and project the construction goal, only the project construction goal or any project aggregate goal in BDDD's discretion.
    - b. The construction goal shall be expressed as a percentage of either the total amount of any lump sum construction Contract awarded to complete a

- project, or in the alternative, the total estimated “cost of the work” as that term is defined in any guaranteed maximum price Contract awarded to complete a project.
- c. The Airport department head shall provide a good faith estimate of the construction cost upon which a construction goal shall be set and the bidder or proposer must provide a refined estimate at the time of the submission of a proposed Compliance Plan, if the amount is not reflected in an executed Contract.
  - d. After consultation with the Department head or a designated representative, BDDD shall establish a timetable for submittal and review of the proposed Compliance Plan.
  - e. At BDDD’s sole discretion, it may require submission and review of a proposed Compliance Plan during the solicitation process as a solicitation submittal requirement or after the conclusion of the solicitation process as a component of Contract negotiations and award. Failure to comply with the submittal timetable may, at BDDD’s sole discretion, result in no further consideration of the proposed Compliance Plan and rejection of the proposal.
2. At a minimum, a proposed Compliance Plan must:
- a. Comply with the Policies, including affirming that BDDD shall have prompt, full and complete access to all bidder or proposer and subcontractor personnel, books and records required to monitor and assure performance of the approved Compliance Plan and acknowledging the Board’s right to withhold payment in the event of non-compliance and subject the Contractor to other sanctions pursuant to the Policies.
  - b. Provide a detailed program for community outreach and support to enhance MBE opportunities.
  - c. Provide a detailed program describing how the bidders or proposers will divide up the anticipated work into economically feasible units calculated to enhance MBE opportunities.
  - d. Describe in detail how the bidders or proposers will make good faith efforts to meet the project goal, including work that the bidders or proposers would normally self-perform, and provide for review, reconciliation milestones and audit opportunities for BDDD.
  - e. If the proposed Compliance Plan is based upon a phased or packaged buy out of the project construction work, the bidders or proposers will describe the process by which the bidders or proposers will address the project goal on a phased/ package or cumulative basis.
  - f. Describe how the bidders or proposers will comply with the requirements herein as part of the subcontractor buyout of the construction work, including use of commitment forms, Schedule of Subcontractors, Intent to Perform and joint venture forms to adequately document committed participation attained.
  - g. Contain a specific acknowledgement of the bidder’s or proposer’s continuing duty to meet the requirements of the Policies. The Compliance Plan must detail how the proposer will make good faith efforts to maintain its MBE commitments.
  - h. Set forth how the bidders or proposers will comply with BDDD’s online reporting system for tabulation of participation performance and plan administration and for monitoring and reporting progress and participation performance to BDDD.
  - i. Recommend methods for supporting BDDD administration and oversight of the Compliance Plan.
  - j. Set forth a detailed methodology for issuance of notice(s) of non-compliance to the bidder’s or proposer’s subcontractors with the Compliance Plan and a reasonable opportunity to cure.
  - k. Set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal and plan close out.
3. BDDD shall approve or initially reject, with comments, the proposed Compliance Plan. If the proposed Compliance Plan is rejected, the bidder or proposer may submit a revised Compliance Plan by a date set by BDDD. BDDD in its sole discretion may

meet with the proposer to discuss any deficiencies that must be addressed in the revised Compliance Plan. If BDDD determines the revised Compliance Plan is insufficient to meet the requirements of the Policies, it shall notify the department head in writing of the rejection and the reasons for the rejection. BDDD's determination shall be final and result in no further consideration of the proposal or, in the event a Contract has been awarded, in withdrawal of the award for cause. In no event shall a Contract to construct a project be executed or continue without an approved Compliance Plan.

**g. PAYMENT**

- i.** It is Board policy that all Contractor invoices submitted to it in compliance with the Contract will be paid by it within 30 days of its receipt.
- ii.** All Contractors must comply with the Texas Prompt Pay Act (Chapter 2251; Texas Government Code) in paying all sums, including retainage withheld from subcontractors, to subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities, including paying such persons or entities within 10 days of receiving payment from the Board their appropriate share of such payment. No Contractor that has received payment of an undisputed amount from the Board may withhold from any subcontractor its undisputed appropriate share of such payment.
- iii.** No Contractor may withhold retainage from any subcontractor at a higher percentage rate than retainage is withheld by the Board from Contractor. Except for the Texas Prompt Pay Act requirement that a Contractor release retainage to a subcontractor within 10 days of that subcontractor's invoice for retainage, each Contractor must withhold/release retainage from/to each subcontractor in at least the same manner as retainage is withheld/released by the Board from/to Contractor (and must include provisions in its subcontracts ensuring this), including, but not limited to mirroring the Board's treatment of retainage withheld/released to Contractor concerning the following subjects:
  1. the percentage amount of retainage withheld/released;
  2. the schedule for withholding/releasing retainage;
  3. the phased release of retainage according to any phased completion (substantial/final) of portions of the project;
  4. the optional cessation of withholding retainage prior to substantial/final completion of, or final payment for, the project (e.g. optional cessation when 50% of project is substantially complete, with an owner's right to resume withholding retainage upon the occurrence of certain events);
  5. the release of retainage prior to final payment, less an amount withheld to cover a percentage of the value of punch-list work required before final completion is certified (e.g. retention of 200% of the value of punch-list work pending certification of final completion).
- iv.** Each Contractor must address (and implement) in its subcontracts the subject of retainage so that each subcontractor is treated by the Contractor in the same manner as Board treats Contractor. Nothing in this provision precludes a Contractor from including in its subcontracts retainage provisions that are more favorable than those contained in the Contract between Board and Contractor, including, but not limited to, provisions withholding retainage at a lesser percentage rate, releasing retainage in part/whole earlier than retainage released by Board and/or withholding less retainage than Board withholds to cover the value of punch-list work required to be completed before final completion certification.
- v.** DFW encourages all Contractors and their subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities to make payment of invoices submitted to them more expeditiously than required under the Texas Prompt Pay Act.
- vi.** Payment by a Contractor in violation of the terms of the Contract or applicable law will constitute a material breach of this Contract.
- vii.** The Board may withhold progress payments until the Contractor demonstrates compliance with the payment terms of this Contract or applicable law, including withholding progress payments solely relating to monies payable to Contractor for work it self-performs or associated retainage.
- viii.** The Board may also exercise any other rights or remedies available to it under this Contract or applicable law if Contractor fails to comply with the payment terms of this Contract or applicable law.
- ix.** In an effort to remove the obstacle of the length of time for subcontractor payments on Board procurements, the Board has an Expedited Payment Policy for eligible Contractors that may

elect to voluntarily participate in. This policy is applicable if a Contractor has been awarded a multi-year Contract for construction and/or maintenance services of at least \$10,000,000 in Contract value. The Expedited Payment program requires those eligible Contractors that voluntarily participate in the program to pay their subcontractors within seven (7) calendar days after receipt of the subcontractor's invoice. The Board would then pay interest and provide other incentives to the Contractor on eligible expedited payments according to the Expedited Payment Process and Policy. The terms for Expedited Payment will be negotiated prior to the issuance of the Notice to Proceed.

- x. To ensure that the Contractor meets all its MBE contractual commitments, BDDD will review the Contractor's MBE utilization throughout the term of the Contract, including any term extensions of the original Contract period. If a Contract includes a MBE contractual commitment, the Contractor must report all MBE payments using the BDDD's online reporting system and submit a **Pay Period Activity Report (PPAR)** (with verifying information) concurrent with the Contractor's submission of payment requests with each invoice. The information reflected on the PPAR will be utilized to provide constant monitoring of the payments made to the MBE as well as non-MBE subcontractors in relation to the percentage of work performed. Failure to include a required PPAR form with the invoice utilizing the Board's online reporting system will result in the invoice being returned to the Contractor.
- xi. Contract Close Out: To ensure that the Contractor meets all its MBE contractual commitments, BDDD will review the Contractor's MBE utilization throughout the term of the Contract, including any term extensions of the original Contract period, prior to receiving final payment. If a Contract includes a MBE contractual commitment, the Contractor must report all MBE payments using BDDD's online reporting system and submit **Final Pay Period Activity Report** (with verifying information) concurrent with the Contractor's submission of final payment request.
- xii. BDDD encourages all Contractors that may have a dispute with any subcontractor to attempt to resolve such dispute through appropriate formal or informal alternative dispute resolution procedures, including, but not limited to, negotiation, mediation, collaborative law, arbitration and/or conciliation, prior to seeking BDDD's assistance in resolving the dispute. If any Contractor or subcontractor does seek BDDD's assistance, it may require them to first attempt to resolve their dispute through appropriate alternative dispute resolution procedures and to provide BDDD with evidence of their good faith attempts to resolve the dispute as a condition of further assistance from BDDD.

#### h. MODIFICATIONS OR SUBSTITUTIONS

- i. This Section applies to all subcontractor modifications, changes and substitutions under this Contract. The Contractor shall comply with this Section to the extent needed to achieve its MBE contractual commitment stated in its **Commitment to Minority Business Enterprise (MBE) Participation** form.
- ii. The Contractor understands that if change orders or any other Contract modifications are issued under the Contract, the Contractor has a continuing obligation to immediately inform BDDD in writing of any agreed upon increase or decrease in the scope of work of such Contract, regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification.
- iii. The Contractor agrees that if change orders or other Contract modifications are issued under the Contract that include an increase in the scope of work whether by amendment, change order, force account or otherwise which increases or decreases the dollar value of the Contract, whether or not such change is within the scope of work designated for performance by a MBE at the time of Contract award, then such amendment, change order or other modification must be contemporaneously submitted to BDDD. The Contractor must make good faith efforts to meet its MBE contractual commitment. If the Contractor is unable to meet its MBE contractual commitment, it must submit a **Request for Approval of Change to Final Schedule of Subcontractors**, must be approved in writing by BDDD.
- iv. The Contractor cannot terminate or otherwise change the terms of its Final Schedule of Subcontractors prior to or after Contract award without the prior written consent of BDDD. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for a MBE subcontractor with its own forces or those of an affiliate, a non-MBE or another MBE.
- v. The Contractor must demonstrate good cause to terminate the MBE to the satisfaction of



BDDD. Good cause includes the following circumstances:

1. The listed MBE subcontractor fails or refuses to execute a written Contract.
  2. The listed MBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
  3. The listed MBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.
  4. The listed MBE is ineligible to work on Board projects because of suspension and debarment proceedings pursuant to federal or state law or other applicable laws or regulations.
  5. BDDD has determined that the listed MBE subcontractor is not a responsible Contractor.
  6. The listed MBE subcontractor voluntarily withdraws from the project and provides BDDD written notice of its withdrawal.
  7. The listed MBE subcontractor is ineligible to receive credit for the type of work required.
  8. The MBE owner dies or becomes disabled with the result that the listed MBE subcontractor is unable to complete its work on the Contract.
  9. Other good cause as determined in BDDD's sole discretion,  
Good cause does not include where the Contractor seeks to terminate a MBE it relied upon to obtain the Contract so that the Contractor can self-perform the work or substitute another MBE or non-MBE subcontractor to perform the work for which the MBE was engaged or listed on the *Final Schedule of Subcontractors*.
- vi. The Contractor must give the MBE notice in writing, with a copy to BDDD, of its intent to request to terminate and/or substitute, and the detailed reasons for the request. The Contractor and the MBE must attempt to negotiate a resolution of the situation, and if the negotiation is unsuccessful, the Contractor must document this effort before the Contractor seeks BDDD's approval to substitute the MBE.
- vii. Contractors must meet the above criteria and process before requesting prior written approval of any material change in the ownership, control, duties, functions and responsibilities of any MBE. The Contractor cannot make any changes to the *Final Schedule of Subcontractors* without the prior written consent of BDDD.
- viii. If the Contractor proposes to terminate or substitute a MBE subcontractor for any reason, the Contractor must make good faith efforts as defined herein to find a substitute MBE subcontractor for the original MBE to meet its MBE contractual commitment. Its good faith efforts shall be directed at finding another MBE to perform or provide at least the same amount of work, material or service under the Contract as the original MBE to the extent necessary to meet its MBE contractual commitment. The Contractor may also find additional MBEs and/or adjust the current/projected MBE participation to meet its MBE contractual commitment.
- ix. The Contractor must submit a *Intent to Perform as a Subcontractor* form for each proposed new MBE subcontractor. BDDD will approve or disapprove the substitution based on the Contractor's documented compliance with these provisions.
- x. All changes to the *Schedule of Subcontractors* form must be submitted for review and approval through the *Request for Approval of Change to Final Schedule of Subcontractors* form when adding, changing, or deleting any subcontractor.
- xi. If the Contractor does not comply with these provisions relating to the modification or termination of, and/or substitution for a MBE subcontractor, the Board may elect to apply Contract remedies as described in the Policies. Additionally, the Board may order the Contractor to forfeit the profits from the terminated portion of the MBE subcontract.

i. COMPLIANCE AND ENFORCEMENT

- i. These Compliance and Enforcement Provisions address the additional contractual remedies available to Board as a result of Contractor's failure to comply with the obligations set forth in the MBE Program requirements. The contractual remedies set forth in the MBE Program are also applicable to the Contractor's failure to comply with the Program requirements, as well as any remedies available at law or in equity. These remedies are not intended to apply to Contractor's failure to comply with other obligations under the Contract unrelated to the Program requirements or preclude Board's recovery of its actual damages for such unrelated breaches.
- ii. The Contractor must forward all necessary documents and information during the course of

performance under this Contract and to close out the Contract and must cooperate with BDDD in providing any information, including the final accounting for MBE participation on the Contract.

- iii. BDDD is empowered to receive and investigate complaints and allegations by MBEs, third parties or Board Staff, or to initiate its own investigations, regarding Contractor's compliance with the Program requirements. If BDDD determines that an investigation is warranted, the Contractor must fully cooperate with the investigation and provide complete, truthful information to the Board concerning the investigation and Contractor's compliance with the Program requirements.
- iv. The failure of the Contractor to meet the MBE contractual commitment or comply with any other aspect of the Program requirements will constitute a material breach of the Contract entitling the Board to exercise any remedy available in this Contract, the Program requirements or applicable law.
- v. The Board may report any suspected false, fraudulent or dishonest conduct relating to the Contractor's performance of the Program requirements to the Board's Department of Audit Services or to any applicable enforcement agency, including the State Attorney General's Office and appropriate federal law enforcement authorities.
- vi. If Contractor is in breach of any of the Program requirements, the Board may exercise any of following remedies, in addition to any other remedies available to it under this Contract or at law or in equity:
  - 1. withholding funds payable under this Contract, including, but not limited to, funds payable for work self-performed by the Contractor or applicable retainage;
  - 2. temporarily suspending, at no cost to DFW, Contractor's performance under the Agreement/Contract;
  - 3. termination of the Agreement/Contract;
  - 4. suspension/debarment, in accordance with applicable law, of Contractor for a period of time from participating in any solicitations issued by DFW for severity of breach of Contract.
- vii. With respect to MBE firms, a finding of non-compliance could result in a denial of certification or removal of eligibility and/or suspension and debarment.

**L. Program Management Software:** Owner utilizes Program Management Software on its computer system, to efficiently and effectively manage construction projects. This system allows many project management functions to be conducted electronically. Construction Manager may be directed by Owner to enter specific Project related information directly into Owner's Program Management Software in Owner's computer system on a day-to-day basis. Some project management functions that are executed within the system Construction Manager may be responsible for include (but are not limited to) Potential Change Order information, Meeting Minutes, Requests for Information (RFIs), Submittal Register, Submittal Packages, Daily Details, and Daily Work Journals. Unless otherwise specified, Construction Manager will use Owner supplied software licenses when using Owner's system.

**M. Environmental Protection.** Construction Manager must comply with all Federal, state, and local laws and regulations controlling pollution of the environment. The Construction Manager must take necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

**N. Environmental and Safety Provisions:**

1. ENVIRONMENTAL DEFINITIONS

- a) **BEST MANAGEMENT PRACTICE.** Shall mean schedules of activities, prohibition of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- b) **ENVIRONMENTAL IMPACT CLAIM.** Shall mean any claim, suit, judgment, penalty, fine, loss, administrative proceeding, request for information, citation, notice, request, inquiry, or expense (including but not limited to any costs of investigation, study, cleanup, removal, response, remediation, transportation, disposal, restoration, monitoring, consultant's fees, contractor's fees, and attorney's fees)

which arises out of, is related to, alleges, or is based on the presence, transportation, handling, treatment, storage, or actual or threatened Release, dispersal, disposal, escape, or migration of any Hazardous Material, Process Water, or Solid Waste, or any other chemical, material, irritant, pollutant, contaminant, regulated substance, or toxic substance (including but not limited to gasoline, diesel fuel, petroleum hydrocarbons, and any by-product or derivative thereof), whether solid, liquid, or gaseous in nature.

- c) ENVIRONMENTAL LAWS. Shall mean all present and future federal, state, and local laws relating to protection of the environment, public health, and welfare, or safety, including, without limitation, all statutes, regulations, ordinances, permits, Best Management Practices, codes, orders, governmental requirements related to discharge of Process Water or other pollutants into the environment, waters of the United States, and/or waters of the State of Texas; and protection of areas of particular environmental concern, including, for example, wetlands, areas inhabited by endangered species, and historic sites.
- d) HAZARDOUS MATERIAL. Shall mean any substance:
  - i. the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or
  - ii. which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state, or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Texas Water Code and/or the Texas Health and Safety Code; or
  - iii. the presence of which on the Airport causes or threatens to cause a nuisance upon the Airport or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Airport; or
  - iv. without limitation, which contains gasoline, diesel fuel, other petroleum hydrocarbons, natural gas liquids, polychlorinated biphenyls (PCBs), asbestos, lead paint, or urea formaldehyde foam insulation.
- e) PROCESS WATER. Means water which contains Hazardous Material from any point source subject to permit requirements or subject to the Texas Pollutant Discharge Elimination System, the National Pollutant Discharge Elimination System, the Clean Water Act, or the Texas Water Code, amendments thereto, and regulations promulgated pursuant thereto.
- f) RELEASE. Means any depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment or threat of release such that a release may enter the environment;
- g) SAFETY LAWS. Means any applicable law, regulation, standard, or order of any governmental agency relating to worker safety.
- h) SOLID WASTE. Shall have the same meaning as in the Resource Conservation and Recovery Act, the Texas Health and Safety Code, and the Texas Solid Waste Disposal Act, and will include sewage.

## 2. ENVIRONMENTAL PROVISIONS

Construction Manager represents, warrants, and covenants the following:

- a. Construction Manager will obtain and maintain all licenses, permits, exemptions, registrations and other authorizations and provide any notices not obtained or provided by Owner pursuant to this Contract which is required under Environmental Laws for conducting the Work and Construction Manager's operations at the Airport.
- b. Construction Manager must comply and must cause all its employees, agents, sub-contractors, and other third parties under Construction Manager's control to comply, and must include in all subcontracts a provision requiring the sub-contractor to comply and all employees or other third parties under sub-contractor's control to comply with all Environmental Laws. Not by way of limitation, but as emphasis only, Construction Manager represents, warrants, and covenants that:
  - 1. Paints and coatings will comply with 30 Texas Administrative Code Section 115.421 (2000), and any amendments or successor thereto.

2. Work involving the use of cut-back asphalt will comply with the 30 Texas Administrative Code Section 115.512 (2000), and any amendments or successor thereto. Cut-back asphalt is defined as any asphaltic cement which has been liquefied by blending with petroleum solvents (dilutents).
- c. Construction Manager must comply and must cause its employees, agents, sub-contractors, and other third parties under Construction Manager's control to comply with all Owner's policies, rules, regulations, and permits, including Chapter 7 of the Owner's Code of Rules and Regulations (a copy of which is attached hereto as an Exhibit), and to conduct the Work consistent with the Owner's commitments under the State Implementation Plan and the National Environmental Policy Act.
- d. Construction Manager may not cause, contribute to, or permit any Release of any Hazardous Materials, Solid Waste, or Process Water by Construction Manager or its employees, agents, sub-contractors, or other third parties under Construction Manager's control into the environment or cause, contribute to, or permit any violation of any Environmental Law.
- e. Construction Manager must dispose of and cause its employees, agents, sub-contractors, or any other third party under Construction Manager's control to dispose of any Solid Waste or Hazardous Materials generated or located at the Airport in compliance with Environmental Laws, and, if not sooner required by Environmental Laws or this Contract, at the termination of this Contract must remove and dispose of all Solid Wastes and Hazardous Materials not incorporated into the work in accordance with this Contract at its sole expense in a lawful and timely manner.
- f. Construction Manager must advise OWNER immediately of any potential or actual non-compliance with any Environmental Law or Safety Law on Airport property by any person.
- g. Construction Manager must, immediately upon receipt, provide OWNER with copies of any notice or other document issued to Construction Manager or its sub-contractors alleging non-compliance or investigating potential non-compliance with any Environmental Law or Safety Law at the Airport.
- h. Construction Manager must not initiate the Work unless and until it has submitted a Construction Application to OWNER and a Construction Permit has been issued for the project.
- i. Construction Manager must comply with the Construction Application Review Comments of D/FW Environmental Affairs Department. Construction Manager must submit a completed Environmental Close-Out Checklist to D/FW Environmental Affairs Department upon completion of the Work.
- j. The OWNER will ensure that the Construction Manager is notified not to initiate Work beyond the Scope of Work described in the relevant FAA review document issued to OWNER pursuant to the National Environmental Policy Act.
- k. The Construction Manager must use construction equipment which has been designed and equipped to prevent or control air pollution in conformance with the regulations of the federal, state, local and airport authorities including any applicable State Implementation Plan and revisions thereto as provided by Owner. Evidence of such design and equipment will be maintained and made available for inspection by Owner's Authorized Representative.
- l. The Construction Manager must monitor collected stormwater as required by Owner's Construction Application Review and/or relevant Construction Permit and/or Environmental Close-Out Checklist to insure it meets standards for allowable discharges set by appropriate laws, rules, regulations, ordinances and permits. Records of measurements will be retained by the Construction Manager for inspection by the Owner's Representative.
- m. For sites equal to or greater than 5 acres, Construction Manager must submit to D/FW Environmental Affairs a completed and signed original Notice of Intent for coverage under the TPDES General Permit for Storm Water Discharges From Construction Activities for submittal to the governing agency by Owner prior to receiving an approved construction permit.
- n. Spills, leaks, or releases of Hazardous Material must be reported immediately to the Airport Operations Center (AOC).
- o. Construction Manager must comply with Owner's Spill Reporting Policy, Clean Air Policy, and Hydrocarbon Spill Recovery for Airport Ramp Area.
- p. Construction Manager must provide a copy of its Storm Water Pollution Prevention Plan (SWPPP) to D/FW Environmental Affairs for review and approval prior to receiving an approved construction permit and the commencement of actual clearing, grading and/or excavation activity.
- q. Upon final stabilization of all affected Work areas as defined in accordance with the requirements of the TPDES General Permit for Storm Water Discharges From Construction Sites, the following documents must be submitted to D/FW Environmental Affairs Department:
  1. One copy of the final SWPPP, signed and certified in accordance with 30 Texas Administrative Code (TAC) 305.44, including, at a minimum, the following items: all amendments, maintenance records, and inspection reports.

2. For sites equal to or greater than 5 acres, a completed original Notice Of Termination (NOT) of Coverage Under the TPDES General Permit for Storm Water Discharges Associated with Construction Activity, signed in accordance with 30 TAC 305.44 for submittal by Owner to the governing agency.
- r. While Owner may issue instructions to the Construction Manager concerning the placement and maintenance of erosion and sediment controls, the Construction Manager will be solely responsible for complying with all requirements of the SWPPP. The SWPPP must be reviewed periodically by Construction Manager for compliance and updated as needed to fit the changing requirements of the Construction Manager's Work.
1. From time to time, and in Owner's sole discretion, OWNER may conduct an inspection, assessment, and/or regulatory compliance audit of the Work and/or Construction Manager's operations, including operations of Construction Manager's employees, agents, sub-contractors, or any other third party under Construction Manager's control. The OWNER may perform testing as needed and may conduct interviews of Construction Manager or its sub-contractors. Construction Manager will cooperate and will cause its employees, agents, sub-contractors, or any other third party under Construction Manager's control to fully cooperate in such inspection, assessment, or audit. Construction Manager remains solely responsible for its environmental compliance, notwithstanding any OWNER inspection, audit, or assessment.
  2. If the Airport or adjacent property are contaminated or otherwise damaged or injured by any Solid Waste or Hazardous Materials released by Construction Manager or its employee, agent, sub-contractor, or any other third party under Construction Manager's control, Construction Manager agrees to promptly undertake remediation of such contamination or damage to background levels, and to restore the affected property to its condition prior to such contamination or damage in all material respects, or to such condition that no deed recordation will be required; provided that, if Construction Manager does not promptly and fully remediate and restore the affected property, OWNER may, but is not required to, perform the remediation and restoration, and Construction Manager must reimburse OWNER for all costs associated with such contamination, remediation, and restoration, including but not limited to consultants' fees, contractor's fees, penalties, attorneys' fees, and costs of investigation and remediation, within twenty (20) days after OWNER delivers notice to Construction Manager of such costs.
  3. Failure by Construction Manager or its subcontractors to comply with any Environmental Provision will be considered a default for which OWNER may exercise its remedies in accordance with Section 80-11, Default and Termination of Contract.

### 3. ASBESTOS-CONTAINING MATERIALS

It is the policy of the D/FW Airport Owner that all architects, engineers, consultants, general contractors, subcontractors, distributors, suppliers, and others receiving proceeds from this Contract be bound by the Owner's philosophy toward the use of asbestos within the boundaries of the D/FW Airport. Towards this end, Construction Manager covenants and agrees that it will not use or install products containing asbestos in any form as part of this Contract or subsequent addendum or Change Order.

This provision applies to all materials and/or products placed in service within the boundaries of D/FW Airport under conditions and terms of this Contract. Construction Manager accepts and assumes all responsibility and liability for asbestos-containing products and/or materials installed or provided in performance of the Work. In addition, the Construction Manager accepts and assumes responsibility and liability for all expenses related to the removal, replacement and reparation of asbestos containing materials put in place under terms of this Contract. Should non-compliance of drawings, notations, and specifications within the asbestos prohibition contained herein be discovered by or on behalf of Construction Manager, the Construction Manager must promptly notify OWNER representatives in writing of the non-compliant notation or specification. The Construction Manager also certifies that a non-asbestos containing material or product of similar kind and quality will be substituted with the approval of Owner.

This provision reflects the mandate of Owner to promote the health, safety, and welfare of the public and to establish a standard for response to asbestos within the limits of Airport authority. Construction Manager must comply with all Environmental and Safety Laws relating to asbestos-containing materials.

This provision supersedes and replaces all other references, specifications, and notations relating to asbestos-containing materials which may appear in this Contract.

If any underground transite pipe or fuel lines are encountered during the project, the Construction Manager must immediately notify Construction Manager.

Any asbestos abatement performed must be conducted in accordance with applicable Environmental and Safety Laws, as well as OWNER standards. Asbestos abatement procedures must be submitted to D/FW Environmental Affairs for review and approval prior to beginning any abatement activity. No asbestos abatement Work may proceed without written authorization from the Airport Development & Engineering Department posted in the field with the Construction Permit.

If requested, manufactures of sealants, adhesives, gasket material, piping, curing materials, and similar building materials must submit letters of certification to Construction Manager that their products are free of asbestos.

4. ENVIRONMENTAL INDEMNITY

**NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, CONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER, THE CITIES OF DALLAS AND FORT WORTH, TEXAS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND COUNCILS FROM AND AGAINST, AND TO REIMBURSE SAME WITH RESPECT TO, ANY AND ALL CLAIMS, DEMANDS, PENALTIES SUITS, ACTIONS, LOSS, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, LITIGATION COSTS, EXPERT WITNESS FEES, AND EXPENSES OF INVESTIGATION AND REMEDIATION) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT, ASSERTED AGAINST OR INCURRED BY SUCH PARTIES AT ANY TIME BY REASON OF, IN CONNECTION WITH, OR ARISING OUT OF (A) THE BREACH OF ANY REPRESENTATION OR WARRANTY SET FORTH IN THIS SECTION 100 BY CONTRACTOR OR ANY EMPLOYEES, AGENTS, SUB-CONTRACTORS, OR ANY OTHER THIRD PARTY UNDER CONTRACTOR'S CONTROL, (B) THE FAILURE OF CONTRACTOR TO PERFORM ANY OBLIGATION REQUIRED BY THIS SECTION 120 TO BE PERFORMED BY CONTRACTOR, OR (C) LOSS FROM ANY ENVIRONMENTAL IMPACT CLAIM, AS DEFINED HEREIN, CAUSED IN WHOLE OR IN PART BY OR ARISING IN WHOLE OR IN PART FROM THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS EMPLOYEES, AGENTS, SUB-CONTRACTORS, OR ANY OTHER THIRD PARTY UNDER CONTRACTOR'S CONTROL; OR (D) THE VIOLATION BY CONTRACTOR OR ITS EMPLOYEES, AGENTS, SUB-CONTRACTORS, OR ANY OTHER THIRD PARTY UNDER CONTRACTOR'S CONTROL OF ANY BOARD ENVIRONMENTAL RULE OR REGULATION, BOARD PERMIT, BOARD POLICY, OR ANY ENVIRONMENTAL LAW.**

5. SAFETY PROVISIONS

The Construction Manager covenants and agrees:

- a. That it will not cause or permit any hazardous chemical (as defined in 29 C.F.R. 1910.1200) to be brought upon the Airport without the prior written consent of OWNER. Consent may be given via the submittal process as long as all such materials are outlined on the submittal.
- b. That it will make available to OWNER a Material Safety Data Sheet (MSDS) for each hazardous chemical Contractor or its sub-contractors, employees, or agents five (5) days prior to delivery of material onto the Airport.
- c. That its operations will always remain in compliance with:
  1. OWNER'S written policies and requirements governing the identification and use of hazardous chemicals;
  2. All Safety Laws.
- d. That it will advise OWNER immediately of any potential or actual non-compliance by any person with any Safety Law on Airport property.
- e. That it will immediately upon receipt, provide OWNER with copies of any notice or other document issued to Construction Manager, its sub-contractors, or agents alleging non-compliance or investigating any potential non-compliance with any Safety Law at the Airport.

Neither the requirements of this clause nor any act or failure to act by Owner will relieve the Construction Manager of responsibility or liability for the safety of the public or OWNER, tenant, contractor, or subcontractor personnel or property.

6. SURVIVAL

The provisions of this Section, including the representations, warranties, covenants and indemnities of Construction Manager, will expressly survive termination of this Contract.

**O. Miscellaneous Provisions.**

**1) Most Favored Client.**

- a) Warranty and Representation.** Construction Manager represents and warrants to Owner that all components of compensation (and, if applicable, the prices, discounts, rebates, allowances and other compensation terms) set forth in the Contract Documents are equal or more favorable to the similar compensation terms (and, if applicable, the prices, discounts, rebates, allowances and other compensation arrangements) contemporaneously offered by Construction Manager to any other client within agreements for services that are similar to the Work.
- b) Duty to Notify of Third-Party More Favorable Terms.** If, subsequent to the Effective Date and during the Term, Construction Manager enters into any agreement with another client that contains compensation terms that are more favorable than those comparable compensation terms contained in the Contract Documents for services that are similar to the Work, it must immediately notify Owner of such arrangements and agrees to amend the Contract Documents to include those applicable and more favorable compensation terms, as directed and agreed to by Owner.
- c) Exclusions.** This Clause will not apply to compensation arrangements that fall into 1 or more of the following categories:
- a) Dissimilar Operating Units.** The services at issue are not provided by the same operating unit (e.g. provided by an operating unit that has no indirect Cost pools in common with the operating unit providing Work under the Contract Documents);
- b) Pro Bono.** The services at issue are pro bono in nature; or
- c) Lump Sum.** The services at issue are provided under agreements that are primarily lump sum in nature, unless such agreements contain compensation components like those contained in the Contract Documents that are used to calculate any lump sum amounts; or
- d) Below Threshold.** The services at issue are provided under an agreement that is less than \$100,000 in value; or
- e) Equitable Considerations.** Other equitable considerations exist under which Owner determines, in its sole discretion, that an amendment of the Contract Documents to adopt the more favorable, common compensation terms would not be appropriate. Construction Manager must advise Owner when it notifies it of such more favorable, common compensation terms of any facts it contends exists to negate the requirement that the Contract Documents be amended to adopt such compensation terms. Any Owner determination on this issue will be final.
- f) Relation Back of Compensation Changes.** If the application of this Clause results in a modification of any compensation terms under the Contract Documents, that modification will be effective as of the date Construction Manager entered into its agreement with the other client. The Parties agree that any overpayments made on Pay Applications submitted to Owner by Construction Manager will be refunded or used as a setoff on future Pay Applications.
- g) Warranty Reporting Requirements.** On January 1 of each year during the Term, Construction Manager must provide Owner a letter, executed by an appropriate representative of Construction Manager (subject to Owner's determination and written approval), warranting and confirming that it is in compliance with this provision and that no other clients of Construction Manager are operating under agreements or other arrangements containing compensation terms that are more favorable than those compensation terms provided in the Contract Documents.

## 2) Audit; Records and Inspection Rights.

### a) Maintenance.

- (1) Construction Manager (and Construction Manager's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must maintain, and Owner will have the right to examine books, records, and documents including, but not limited to, Subcontracts, joint venture agreements, general ledgers, job Costs records, purchasing records, bank statements, cancelled checks, payroll records, project records and any other supporting evidence deemed necessary by Owner to substantiate compliance with the terms of the Contract Documents, including, but not limited to, Costs and charges of whatever nature related to, incurred and/or anticipated to be incurred in the performance of the Contract Documents.
- (2) Such right of examination will include inspection at all reasonable times of Construction Manager's office or facilities or such parts thereof as may be engaged in the performance of the Contract Documents and cooperation by Construction Manager Personnel (including, but not limited to, cooperation in obtaining records from Construction Manager's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves), as reasonably considered necessary by Owner's representatives to complete the audit.

### b) Examination.

- (1) **Scope.** Owner will have the right to examine all books, records, documents, and other data of Construction Manager related to the negotiation, pricing, or performance of the Contract Documents, including Change Orders, Modifications, Amendments or similar documents, for evaluating the accuracy, completeness and currentness of the Costs or pricing data submitted or retained regarding providing Work. The right of examination will extend to all records necessary to permit adequate evaluation of the Costs or pricing data submitted along with the computations and projections used therein. Proprietary/Trade Secret information may not be withheld from Owner.

#### (2) Format; Costs; Availability.

- i) Construction Manager's (and Construction Manager's Subconsultants'/Subcontractors', suppliers', vendors', insurance agents', and other agents' and any Persons' acting for or on any of their behalves) documents, records and other evidence will be subject to inspection and/or reproduction by Owner. Construction Manager, (and Construction Manager's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must provide Owner with retrievals, in the format(s), including, but not limited to, the file format(s), specified by Owner, of computer-based records or transactions that Owner determines to be necessary to conduct the audit.
- ii) There will be no charge to Owner for reasonable use of photocopy machines while conducting the audit, or for any Costs of retrieving, downloading, and/or printing and delivering to Owner any records or transactions stored in magnetic, optical, microfilm, or other media.
- iii) Construction Manager (and Construction Manager's Subcontractors, suppliers, vendors, insurance agents, and other agents and any Persons acting for or on any of their behalves) must provide all records and retrievals requested within 7 Days.
- iv) Owner may also request, and Construction Manager agrees to provide, monthly, categories of records subject to Owner's right to audit for review by Owner.

### c) Retention.



- (1) **General.** All records required to be produced/made available under this Clause must be made available at any office of Construction Manager where they are located at all reasonable times, for inspection, audit or reproduction, until the expiration of 4 years from the date of final payment. Construction Manager must provide adequate and appropriate workspace to conduct all audits, inspections and reviews. If requested by Owner, computer-based retrievals and copies of selected documents and records must be delivered to Owner. Owner will provide Construction Manager with reasonable notice of intended audits, inspections and reviews.
  - (2) **Termination.** If this Contract is completely or partially terminated, the records relating to the Work terminated must be made available for a period of 2 years from the date of final payment.
  - (3) **Litigation/Claims.** Records which relate to litigation or settlement of claims arising out of the performance of this Contract must be made available for a period of 2 years from the date of final disposition of such litigation or claims.
- d) **Pass-Down.** Construction Manager must insert an Article containing all the provisions of this Clause, including this paragraph, in all Subcontracts, except altered as necessary for the proper identification of the contracting Persons. If requested by Owner, Construction Manager must submit copies to Owner of all Subcontracts and changes to Subcontracts pertaining to this Contract. Failure to submit such written Subcontracts or to insert this Article in all Subcontracts will be reason to exclude some or the entire related payee's compensable Costs from the amounts payable to Construction Manager pursuant to the Contract Documents.
  - e) **Audit; Overcharges.** If an audit or review, in accordance with this Article, discloses overcharges (of any nature) by Construction Manager more than 3% of the total Contract value audited, the Cost of Owner's audit will be reimbursed by Construction Manager (in addition to the amount overcharged). The amount of Owner's audit reimbursement will not exceed the value of the overcharges.

### 3) Conflicts.

- a) **Prohibition on Conflicts.** Construction Manager covenants that it, its Subcontractors, Construction Manager Personnel and all Persons employed by it/them or acting as its/their representatives has/have no interest, nor may it or they acquire any interest, directly or indirectly, which would conflict in any manner with providing Work under the Contract Documents or any Subcontract. Construction Manager further covenants that no Person having such conflicting interest will be employed by it or any Subcontractors or allowed to act as its/their representative.
- b) **Prohibited Contracts/Agreements.**
  - (1) **Prohibition.** Other than the Work provided concerning this Contract, Construction Manager, Subcontractors, Construction Manager Personnel or Persons employed by them or acting on their behalf [including Persons that comprise Construction Manager or any Subcontractor (e.g. a joint venturer, if Construction Manager or a Subcontractor is a Joint Venture; a partner, if Construction Manager or a Subcontractor is a partnership)] are prohibited from contracting with, or providing services to:
    - i) Owner; and
    - ii) Any Person doing business at the Airport.
- c) **Waiver.** Construction Manager may seek a waiver from this Clause for it, a Subcontractor, a Construction Manager Personnel or a Person employed by them or acting on their behalf by requesting such waiver in writing setting forth in detail why Owner should grant that waiver. Owner's determination on any waiver request will be final.

### 4) Attorneys' Fees and Costs.

- a) **Recoverable Litigation Costs.**

(1) **Litigation Costs.** In any litigation filed by either Party against the other arising out of a dispute under or relating to this Contract, the prevailing Party in the litigation at trial and on appeal, if applicable, will be entitled to recover its reasonable and necessary attorneys'/paralegals' fees and litigation costs and expenses regarding such litigation (collectively, the "Litigation Costs") incurred by it that are equitable and just, as fixed by the Court in accordance with this clause. **THE USE OF THE TERM "COURT" IN THIS CLAUSE MEANS A COURT OF COMPETENT JURISDICTION AND ANY AWARD OF LITIGATION COSTS WILL BE DETERMINED BY THE JUDGE OF SUCH COURT, NOT A JURY; THIS CONSTITUTES A JURY WAIVER.** Accordingly, the prevailing Party must file and serve a post judgment motion for recovery of its Litigation Costs, the motion must comply with Texas Applicable Laws, and a hearing may be held on the motion at the Court's discretion.

(2) **Litigation Costs Include Fees of In-House and Outside Counsel/Paralegals.**

i) **Recoverability.** Litigation Costs recoverable by any Party include Litigation Costs incurred by any in-house counsel/paralegals and/or outside counsel/paralegals it uses as set forth in this clause.

ii) **In-House.** If a Party is represented by in-house counsel, the attorneys' fees component of such Litigation Costs will be set at \$300/hour for attorneys who have been licensed and actively practicing 10 or more years, \$250/hour for attorneys who have been licensed and actively practicing for less than 10 years; recoverable fees for paralegals will be set at \$100/hour. Litigation Costs attributable to each attorney and paralegal will be calculated using the computed hourly billing rate times the number of hours worked on the litigation. This formula is still subject to all limitations set forth in this clause.

iii) **Outside Counsel.** If a Party uses outside counsel/paralegals for the litigation, such Litigation Costs will be calculated at the billing rates of the firm's attorneys/paralegals participating in the litigation, times the number of hours worked by such participating attorneys/paralegals. This calculation is still subject to all limitations set forth in this clause.

iv) **Dual Recovery.** A Party may recover Litigation Costs associated with in-house counsel/paralegals and outside counsel/paralegals in accordance with this clause even if both types of counsel are used in any litigation.

b) **Prevailing Party.**

(1) **Defined.** The term "prevailing Party," means: (a) that Party who obtains a final, enforceable judgment (including a dismissal) in its favor on a pleaded claim or defense that is upheld by the trial court or, in the case of an appeal, by the final appellate body that considers the appeal, and (b) in the case of a Party seeking monetary relief on one or more affirmative claims, that Party must also be awarded a final enforceable judgment in its favor of at least seventy-five percent (75%) of its pleaded damages (where such judgment is upheld by the trial court or, in the case of an appeal, by the final appellate body that considers the appeal).

(2) **Defendant May be a Prevailing Party.** The Parties acknowledge and agree that, in certain circumstances, a Party that is a defendant in litigation filed by the other Party, that acts in a purely defensive manner and that does not assert a counterclaim against the Party plaintiff may be a prevailing Party in the litigation that is entitled to an award of Litigation Costs by the Court.

(3) **Multiple Prevailing Parties.** The Parties acknowledge and agree that, in certain circumstances, both may be considered prevailing Parties in any litigation brought between them concerning this Contract, particularly if both bring claims against the other in the form of original claims by the plaintiff Party and counterclaims by the defendant Party or if one Party asserts numerous claims against the other and some or all those claims are successfully defended against.

c) **Allocation between Equitable and Legal Claims.** In all cases where a Party is awarded a remedy in equity or at law, all Litigation Costs awarded will be consistent with this clause, equitable and just, and

in reasonable proportion to the relief granted. If a Party's trial pleadings request remedies in equity and at law, and that Party seeks the recovery of Litigation Costs for both types of relief, it must reasonably, equitably, and justly allocate its Litigation Costs between the equitable and legal relief sought so that the Court may appropriately apply this clause and Applicable Laws in determining the amount of any Litigation Costs to be awarded to the prevailing Party.

- 5) **Owner Code of Business Ethics.** Construction Manager agrees to provide to Construction Manager Personnel a copy of the Owner's Code of Business Ethics and to ensure that Construction Manager Personnel comply with such Code in terms of Construction Manager Personnels' interaction with employees of the Owner. Additionally, Construction Manager Personnel will comply with the terms of such Code of Business Ethics as if each were, in fact, an employee of the Owner.
- 6) **Jurisdiction and Venue.** The Parties consent to the exclusive jurisdiction of the state courts of Dallas or Tarrant County, Texas, or the United States District Court for the Northern District of Texas, and agree that all actions relating to this Contract will be litigated in such courts.
- 7) **State Sales and Use Taxes.** Owner qualifies for exemption from certain State and local sales and use taxes pursuant to Applicable Laws. Construction Manager may claim exemption from payment of certain applicable State taxes by complying with procedures prescribed by the State Comptroller of Public Accounts. It is Construction Manager's obligation to evaluate and utilize available procedures for gaining tax-exempt status for any portion of its Work. Owner is not obligated to compensate Construction Manager for taxes paid on items that qualify for tax exemption.
- 8) **Independent Contractor.**
  - a) **Legal Relationship.** Construction Manager is an independent contractor of Owner and nothing in the Contract Documents will be deemed to constitute Construction Manager and Owner as partners, joint venturers, or principal and agent, or be construed as requiring or permitting the sharing of profits or losses.
  - b) **Authority to Act.** Neither Party has the authority to represent or bind or create any legal obligations for or on behalf of the other Party.
  - c) **Subcontractors.** Nothing contained in the Contract Documents or any document in any way relating to it (including, but not limited to, Subcontracts, purchase orders, Pay Applications or similar documents) will create any contractual relationship between Owner and any of Construction Manager's Subcontractors, their Construction Manager Personnel, agents, representatives and similar Persons.
- 9) **Owner Information Systems Security.** Construction Manager agrees that it, all subcontractors, Construction Manager or subcontractor personnel and any persons acting on their behalf will follow Applicable Laws concerning Owner information systems security and information technology systems and assets.
- 10) **SSI.** Construction Manager agrees that it, all subcontractors, Construction Managers or subcontractor personnel and any persons acting on their behalf, will comply with all Applicable Laws concerning the protection of Sensitive Security Information, as addressed in 49 C.F.R. Part 1520, and any similar Applicable Laws.
- 11) **Contracting Prohibitions:**
  - a) Construction Manager verifies and agrees that:
    - (1) it does not boycott Israel; and
    - (2) it will not boycott Israel during the Contract term.
  - b) "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.

- c)** This Contract will immediately terminate for default if, during its term, Construction Manager:
- (1)** boycotts Israel, effective upon the first act that constitutes a “boycott Israel” action under the definition; or
  - (2)** is placed on any list identifying a company that:
    - i)** contracts with or provides supplies or services to a foreign terrorist organization;
    - ii)** engages in certain scrutinized business operations in Sudan, Iran or with a designated foreign terrorist organization; or
    - iii)** has been complicit in the Darfur genocide during any preceding 20-month period.<sup>4</sup>
- d)** Construction Manager warrants to Owner that it will not be placed on any of those lists during the Contract term.

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<sup>4</sup> See Texas Government Code; Chapter 2252; Subchapter F; Prohibition on Contracts with Certain Companies (including Sections 2252.152 and 2252.153); Chapter 2270; Prohibition on Contracts with Companies Boycotting Israel; and Chapter 2270; Prohibition on Investing Public Money in Certain Investments (including Sections 2270.0001, 2270.0052, 2270.0102 and 2270.0152).