



## **NOTICE OF MEETING OF THE GOVERNING BODY OF THE CITY OF BURNET**

Notice is hereby given that a **Regular Council Meeting** will be held by the governing body of the above named City on the **24<sup>th</sup> day of July, 2018** at **6:00** p.m. in the Council Chambers, Burnet Municipal Airport, 2402 S. Water, Burnet, at which time the following subjects will be discussed, to-wit:

This notice is posted pursuant to the Texas Government Code, Chapter §551-Open Meetings.

**CALL TO ORDER:**

**INVOCATION:**

**PLEDGE OF ALLEGIANCE:**

**PLEDGE TO TEXAS FLAG:**

### **1. PUBLIC RECOGNITION/SPECIAL REPORTS:**

1.1) Chamber of Commerce Report

### **2. CONSENT AGENDA ITEMS:**

*(All of the following items on the Consent Agenda are considered to be self-explanatory by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a Council Member, staff member or citizen requests removal of the item from the consent agenda for the purpose of discussion. For removal of an item, a request must be made to the Council when the Consent Agenda is opened for Council Action.)*

2.1) Approval of the July 10, 2018 Council Workshop Meeting minutes

2.2) Approval of the July 10, 2018 Regular City Council Meeting minutes

### **3. PUBLIC HEARING: None.**

### **4. ACTION ITEMS:**

4.1) Discuss and consider action: SECOND AND FINAL READING OF AN ORDINANCE ABANDONING THAT PORTION OF SOUTH SILVER STREET BOUNDED TO THE NORTH BY THE WEST PECAN STREET RIGHT-OF-WAY AND TO THE SOUTH, BY THE WILLOW STREET RIGHT-OF-WAY, AND THAT

PORTION OF ELM STREET BOUNDED TO THE EAST BY THE SOUTH SILVER STREET RIGHT-OF-WAY AND TO THE WEST BY RAILROAD RIGHT-OF-WAY; SAID ELM STREET ABANDONMENT TO BE SUBJECT TO RETENTION OF PUBLIC UTILITY AND DRAINAGE EASEMENTS; DIRECTING THE CITY SECRETARY TO CAUSE THIS ORDINANCE TO BE RECORDED IN THE DEED RECORDS OF BURNET COUNTY; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE: E. Milliorn

4.2) Discuss and consider action: Contract for the Police Department Project Construction Manager-at-Risk with American Constructors: D. Vaughn

4.3) Discuss and consider action: FIRST READING OF AN ORDINANCE OF THE CITY OF BURNET, TEXAS, AMENDING CHAPTER 1 ("GENERAL PROVISIONS") OF THE BURNET CODE OF ORDINANCES, CITY OF BURNET, TEXAS, BY REPLACING SECTION 1-6 GENERAL PENALTY FOR VIOLATIONS OF CODE IN ITS ENTIRETY AND DELETING SECTION 1-11 CULPABLE MENTAL STATE NOT REQUIRED IN ITS ENTIRETY, PROVIDING SEVERABILITY, OPEN MEETINGS AND EFFECTIVE DATE CLAUSES; PROVIDING PENALTIES; AND PROVIDING FOR RELATED MATTERS: D. Vaughn

4.4) Discuss and consider action: Acceptance of a drainage easement being 0.371 acres out of Lot 2-A, Block No. 38, of the Alexander Addition to the City of Burnet, a subdivision in the City of Burnet, Burnet County, Texas as shown on the plat recorded in Document No. 201711290 to the Burnet Economic Development Corporation and more particularly described as property located in the 800 Block of South Rhomberg Street: E. Milliorn

4.5) Discuss and consider action: Approval of funding for Silver and Pecan Street Sewer Line: A. Burdell

4.6) Discuss and consider action: Approval of LCRA Community Development Partnership Program (CDPP) grant application: L. Baugh

## **5. REPORTS:**

5.1) Addendum to the City Council Agenda: Department and Committee Reports/Briefings: The City Council may or may not receive a briefing dependent upon activity or change in status regarding the matter. The listing is provided to give notice to the public that a briefing to the Council on any or all subjects may occur.

5.1(B.3) June 2018 Financial Report: P. Langford

## **6. REQUESTS FROM COUNCIL FOR FUTURE REPORTS:**

## **7. ADJOURN:**

Dated this 20<sup>th</sup>, day, of July, 2018

**CITY OF BURNET**

**CRISTA GOBLE BROMLEY, MAYOR**

I, the undersigned authority, do hereby certify that the above NOTICE OF MEETING of the governing body of the above named City, BURNET, is a true and correct copy of said NOTICE and that I posted a true and correct copy of said NOTICE on the bulletin board, in the City Hall of said City, BURNET, TEXAS, a place convenient and readily accessible to the general public at all times, and said NOTICE was posted on July 20, 2018, at or before 5 o'clock p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

---

Kelly Dix, City Secretary

**NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS:**

*The City Council Chamber is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's office (512.756.6093) at least two working days prior to the meeting. Requests for information may be faxed to the City Secretary at 512.756.8560.*

**RIGHT TO ENTER INTO EXECUTIVE SESSION:**

*The City Council for the City of Burnet reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).*

STATE OF TEXAS            {}  
COUNTY OF BURNET       {}  
CITY OF BURNET           {}

On this the 10<sup>th</sup> day of July, 2018, the City Council of the City of Burnet convened in Workshop Session, at 5:00 p.m. at the Council Chambers, Burnet Municipal Airport, 2402 S. Water Street, Burnet, TX thereof with the following members present, to-wit:

Mayor	Crista Goble Bromley
Council Members	Paul Farmer, Tres Clinton, Cindia Talamantez
Absent	Joyce Laudenschlager, Mary Jane Shanes, Danny Lester,
City Manager	David Vaughn
City Secretary	Kelly Dix

Guests: James B. Wilson, Mark Lewis, Evan Milliron, Gene Courtney, Mark Ingram, Patricia Langford, Paul Nelson, Connie Maxwell, Alan Burdell, Leslie Baugh, Jonny Simons, Doug Fipps, Adrienne Field, Karen Moore, Dan McBride, Lynn Bishop, Bob Rowan

Call to Order: Mayor Bromley called the meeting to order at 5:00 p.m.

Christ Yoder Animal Shelter funding and operation: City Manager David Vaughn provided Council with an overview of the financial status of the Hill Country Humane Society (formerly known as the Christ Yoder Animal Shelter). Due to unexpected shortfalls in the projected budget, the board was present to request Council to consider providing an additional \$25,000.00 of funding assistance which will assist with sustaining operations to the end of the FY year. The Board also agreed that they would like City Manager David Vaughn to assist with review of the Humane Society's operations and financial policies.

Adjourn: There being no further business the workshop was adjourned at 5:47 p.m.

---

Crista Goble Bromley, Mayor

ATTEST:

---

Kelly Dix, City Secretary



STATE OF TEXAS            {}  
COUNTY OF BURNET       {}  
CITY OF BURNET           {}

On this the 10<sup>th</sup> day of July, 2018, the City Council of the City of Burnet convened in Regular Session, at 6:00 p.m., at the regular meeting place thereof with the following members present, to-wit:

Council Members	Paul Farmer, Tres Clinton, Cindia Talamantez
Absent	Joyce Laudenschlager , Mary Jane Shanes, Danny Lester
City Manager	David Vaughn
City Secretary	Kelly Dix

Guests: James B. Wilson, Mark Lewis, Evan Milliorn, Gene Courtney, Mark Ingram, Patricia Langford, Paul Nelson, Connie Maxwell, Alan Burdell, Leslie Baugh, Jonny Simons, Doug Fipps, Adrienne Feild, Savanna Gregg, Craig Lindholm, Jerelyn Schafer, Ashley Schafer, Ian Schafer

CALL TO ORDER: The meeting was called to order by Mayor Bromley, at 6:00 p.m.

INVOCATION: Council Member Paul Farmer

PLEDGE OF ALLEGIANCE: Council Member Tres Clinton

PLEDGE TO TEXAS FLAG: Council Member Tres Clinton

PUBLIC RECOGNITION/SPECIAL REPORTS: None.

CONSENT AGENDA ITEMS:

*(All of the following items on the Consent Agenda are considered to be self-explanatory by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a Council Member, staff member or citizen requests removal of the item from the consent agenda for the purpose of discussion. For removal of an item, a request must be made to the Council when the Consent Agenda is opened for Council Action.)*

Approval of the June 26, 2016 Council Workshop Minutes

Approval of the June 26, 2018 Regular City Council Meeting minutes

Council Member Tres Clinton moved to approve the consent agenda as presented. Council Member Paul Farmer seconded, the motion carried unanimously.

PUBLIC HEARING:

Public Hearing: The City Council of the City of Burnet, Texas will hold a public hearing for the purpose of considering abandonment of that portion of S. Silver Street bounded to the north by the E. Pecan Street right-of-way and to the south, by the Willow Street right-of-Way, and that portion of Elm Street bounded to the east by the S. Silver Street. right-of-way and to the west by the City of Austin Railroad right-of-way; said Elm Street abandonment to be subject to retention of a 25-foot public utility easement: M. Lewis: Mayor Bromley opened the public hearing and asked if anyone was interested in speaking, if so to approach the podium. There being no one wishing to speak, Mayor Bromley closed the public hearing.

ACTION ITEMS:

Discuss and consider action: FIRST READING OF AN ORDINANCE ABANDONING THAT PORTION OF SOUTH SILVER STREET BOUNDED TO THE NORTH BY THE EAST PECAN STREET RIGHT-OF-WAY AND TO THE SOUTH, BY THE WILLOW STREET RIGHT-OF-WAY, AND THAT PORTION OF ELM STREET BOUNDED TO THE EAST BY THE SOUTH SILVER STREET RIGHT-OF-WAY AND TO THE WEST BY RAILROAD RIGHT-OF-WAY; SAID ELM STREET ABANDONMENT TO BE SUBJECT TO RETENTION OF A 25-FOOT PUBLIC UTILITY EASEMENT; DIRECTING THE CITY SECRETARY TO CAUSE THIS

ORDINANCE TO BE RECORDED IN THE DEED RECORDS OF BURNET COUNTY; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE: M. Lewis: Council Member Paul Farmer made a motion to approve the first reading of Ordinance No. 2018-11as presented. Council Member Tres Clinton seconded, the motion carried unanimously.

Discuss and consider action: Approval of engineering for the Manhole Rehabilitation Project: A. Burdell: Council Member Paul Farmer made a motion to approve the engineering contract with Jones and Carter for the Manhole Rehabilitation Project. Council Member Cindia Talamantez seconded, the motion carried unanimously.

Discuss and consider action: Purchase of property located at 1005 S. Main from the Burnet County Appraisal District: D. Vaughn: Council Member Paul Farmer made a motion to approve City Manager David Vaughn to proceed with the purchase of the property located at 1005 S. Main Street from the Burnet County Appraisal District in an amount not to exceed \$2,450.00. Council Member Tres Clinton seconded, the motion carried unanimously.

Discuss and consider action: Request for additional funding and additional staff representation on the board overseeing operations at Christ Yoder Animal Shelter: D. Vaughn: Council Member Tres Clinton made a motion to approve additional funding for the Hill Country Humane Society (formerly known as Christ Yoder Animal Shelter) in the amount of \$25,000.00 and to approve City Manager, David Vaughn to serve with the Hill Country Humane Society Board of Directors. Cindia Talamantez seconded, the motion carried unanimously.

Discuss and consider action: Accept the donation of 0.18 acre tract of land in the John Hamilton Survey No. 1, Abstract No. 405, Burnet County, Texas, further being a portion of outlot No. 1 Hamilton Creek Addition more generally located in the 400 Block of Buchanan Drive. E. Milliorn: Council Member Cindia Talamantez made a motion to accept the donation of 0.18 acre tract of land in the John Hamilton Survey No. 1, Abstract No. 405, Burnet County, Texas, further being a portion of outlot No. 1 Hamilton Creek Addition more generally located in the 400 Block of Buchanan Drive as presented. Council Member Paul Farmer seconded, the motion carried unanimously.

#### REPORTS:

Addendum to the City Council Agenda: Department and Committee Reports/Briefings: The City Council may or may not receive a briefing dependent upon activity or change in status regarding the matter. The listing is provided to give notice to the public that a briefing to the Council on any or all subjects may occur.

Code Enforcement Update Report: M. Lewis: Mark Lewis Director of Development services presented a power point covering current activity numbers for the Code Enforcement Department, the junk vehicle process and briefed Council on some upcoming dangerous building cases.

REQUESTS FROM COUNCIL FOR FUTURE REPORTS: None.

ADJOURN: There being no further business a motion to adjourn was made by Council Member Paul Farmer at 6:38 p.m., seconded by Council Member Cindia Talamantez. The motion carried unanimously.

ATTEST:

---

Crista Goble Bromley, Mayor

---

Kelly Dix, City Secretary



## Development Services

### ITEM 4.1

Mark S. Lewis  
Development Services Director  
(512)-715-3215  
mlewis@cityofburnet.com

## Agenda Item Brief

**Meeting Date:** July 24, 2018

**Agenda Item:** Discuss and consider action: SECOND AND FINAL READING OF AN ORDINANCE ABANDONING THAT PORTION OF SOUTH SILVER STREET BOUNDED TO THE NORTH BY THE WEST PECAN STREET RIGHT-OF-WAY AND TO THE SOUTH, BY THE WILLOW STREET RIGHT-OF-WAY, AND THAT PORTION OF ELM STREET BOUNDED TO THE EAST BY THE SOUTH SILVER STREET RIGHT-OF-WAY AND TO THE WEST BY RAILROAD RIGHT-OF-WAY; SAID ELM STREET ABANDONMENT TO BE SUBJECT TO RETENTION OF PUBLIC UTILITY AND DRAINAGE EASEMENTS; DIRECTING THE CITY SECRETARY TO CAUSE THIS ORDINANCE TO BE RECORDED IN THE DEED RECORDS OF BURNET COUNTY; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE: E. Milliorn

**Background:** The request for abandonment of the rights-of-way described above is being brought forward to City Council with a unanimous Planning and Zoning Commission recommendation for approval. Staff concurs with the Commission's recommendation.

The Ordinance and associated exhibit have been revised to reflect Council's motion to include a drainage easement for that portion of Silver Street right-of-way between Elm Street and Willow Street rights-of-way; and a drainage easement for that portion of Elm Street right-of-way between Silver Street right-of-way and the City of Austin right-of-way.

**Information:**

City Charter Section 10.11 establishes requirements and procedures for alley abandonment. This request satisfies those requirements and processes.

**Recommendation:**

Approve and adopt Ordinance 2018-11 as presented.

## ORDINANCE NO. 2018-11

AN ORDINANCE ABANDONING THAT PORTION OF SOUTH SILVER STREET BOUNDED TO THE NORTH BY THE WEST PECAN STREET RIGHT-OF-WAY AND TO THE SOUTH, BY THE WILLOW STREET RIGHT-OF-WAY, AND THAT PORTION OF ELM STREET BOUNDED TO THE EAST BY THE SOUTH SILVER STREET RIGHT-OF-WAY AND TO THE WEST BY RAILROAD RIGHT-OF-WAY; SAID ELM STREET ABANDONMENT TO BE SUBJECT TO RETENTION OF A PUBLIC UTILITY AND DRAINAGE EASEMENTS<sup>[EM1]</sup>; DIRECTING THE CITY SECRETARY TO CAUSE THIS ORDINANCE TO BE RECORDED IN THE DEED RECORDS OF BURNET COUNTY; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

**WHEREAS**, Section 10.11 of the City Charter establishes requirements and procedures for abandonment of rights-of-way; and

**WHEREAS**, the Planning and Zoning Commission conducted a public hearing on July 2, 2018 and by unanimous vote approved the abandonment of the rights-of-way; and

**WHEREAS**, the City Council in accordance with the City Charter conducted a public hearing on July 10, 2018; and

**WHEREAS**, the City Council finds that it is necessary to retain public utility and drainage easements ~~be retained~~ ~~be retained for that portion of Elm Street right-of-way between the eastern Silver Street right-of-way boundary and the City of Austin Railroad Right-of-Way~~; and

**WHEREAS**, the City Council of the City of Burnet has determined that abandonment of those street rights-of-way referenced herein to be in the best public interest; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:**

**Section 1. Findings.** The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2. Abandonment of Street Rights-of-wayWay.** That portion of South Silver Street bounded to the north by the West Pecan Street right-of-way and to the south, by the Willow Street right-of-way, and that portion of Elm Street bounded to the east by the South Silver Street right-of-way and to the west by the City of Austin Railroad right-of-way and more particularly described on Exhibit "A" attached hereto and incorporated for all purposes herein, are hereby abandoned in favor of the abutting property owners.

**Section 3. Retention of ~~public~~Public utility-Utility easementEasement and Drainage Easements.** Said Elm Street abandonment is subject to retention of a ~~25-foot~~ public utility easement ~~and~~ more particularly described ~~on the Cuplin and Associates, Inc. survey identified as project number 171480~~ and attached hereto as Exhibit "B". Said abandonment is additionally subject to the retention of drainage easements as described and attached hereto as Exhibit "C".

**Section 4. Abandonment Recorded.** The City Secretary of the City of Burnet is hereby directed, upon its final passage, to cause this ordinance to be recorded in the Deed Records of Burnet County.

**Section 5. Repealer.** That other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent that they are in conflict.

**Section 6. Severability.** That should any provisions of this ordinance be held void or unconstitutional, it is hereby provided that all other parts of the same which are not held void or unconstitutional shall remain in full force and effect.

**Section 7. Effective Date.** That this ordinance is effective upon final passage and approval.

**Section 8. Open Meetings.** That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Chapter. 551, Loc. Gov't. Code.

**PASSED AND APPROVED** on First Reading this the 10<sup>TH</sup> day of July 2018.

**FINALLY PASSED AND APPROVED** on this the 24<sup>th</sup> day of July 2018.

---

**CITY OF BURNET, TEXAS**

---

Crista Goble Bromley, Mayor

**ATTEST:**

---

| Kelly Dix, City Secretary



# Exhibit "A"

## Rights-of-Way to be Abandoned

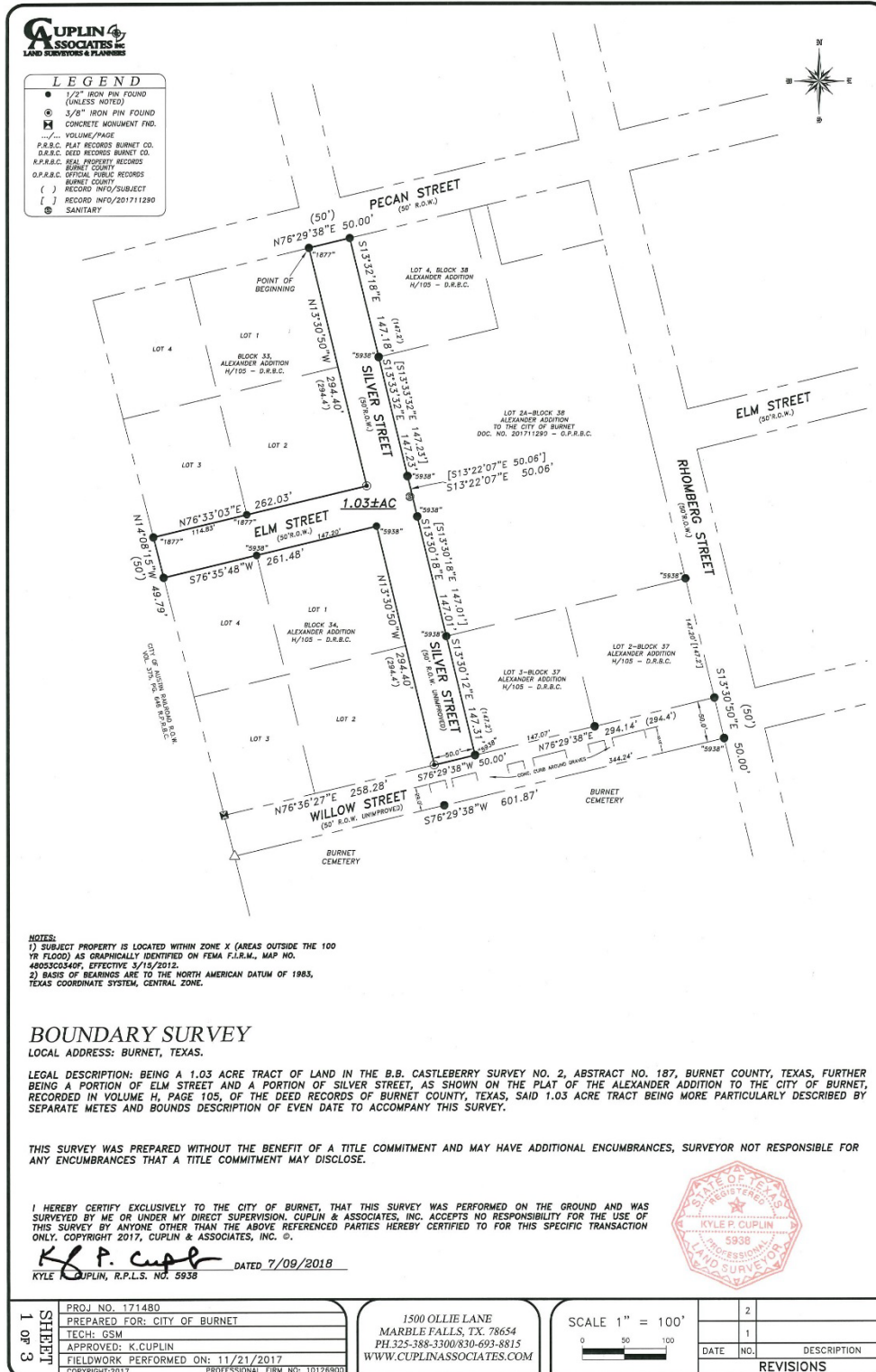
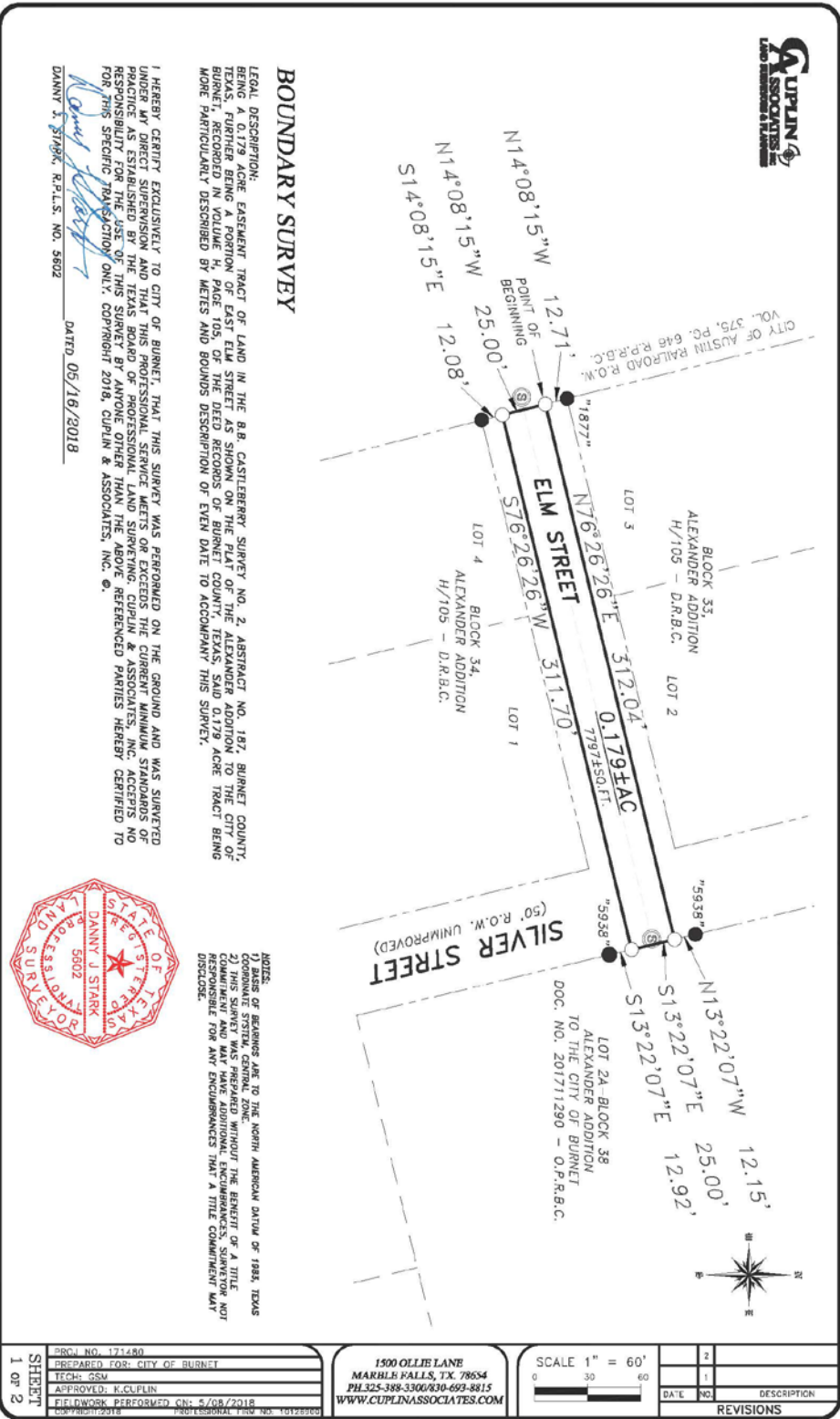
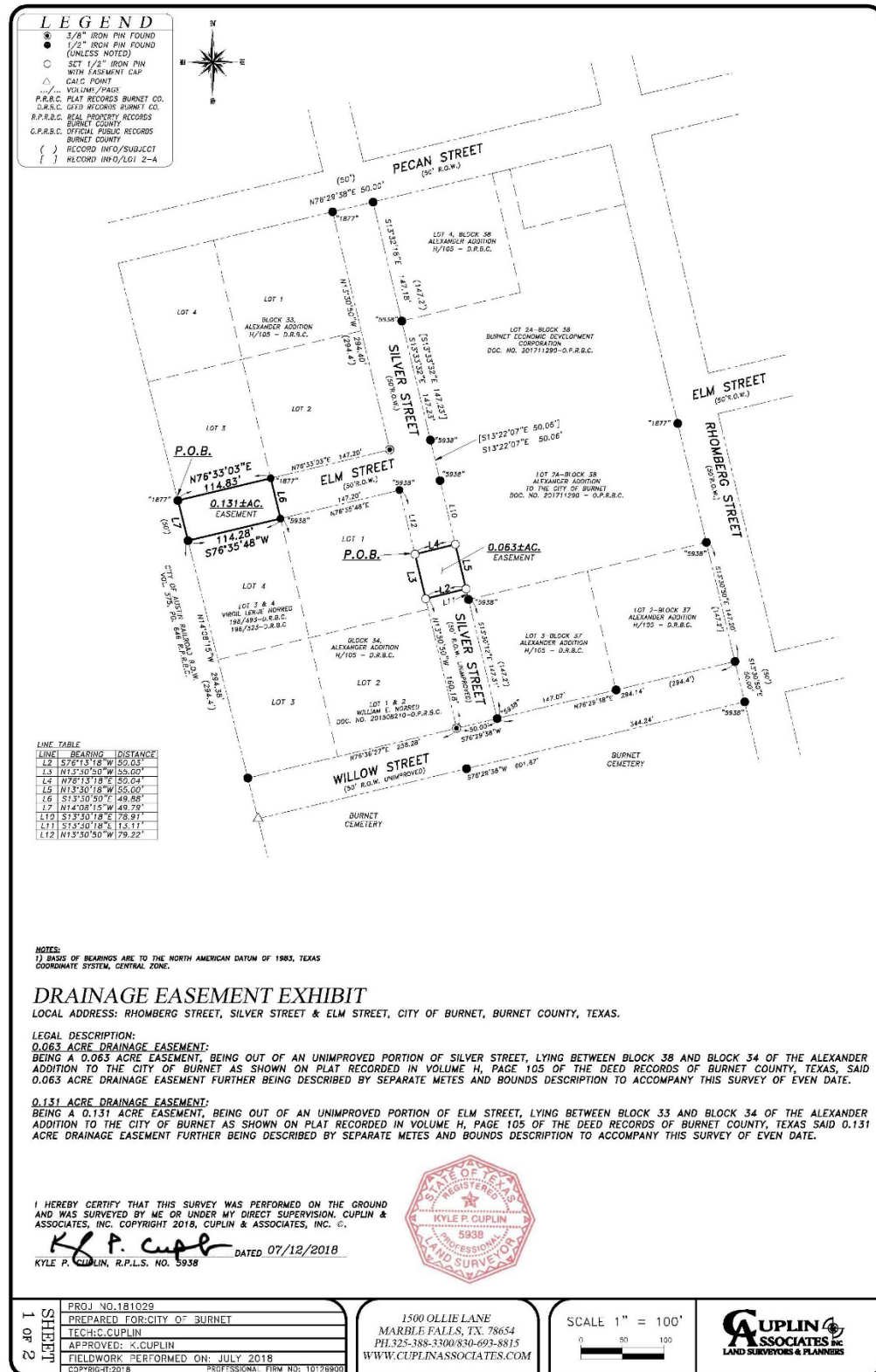


Exhibit "B"  
Public Utility Easement to be Retained



# Exhibit "C" Drainage Easement



# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009

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

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

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

City of Burnet Texas  
1001 Buchanan Drive, Suite 4  
Burnet, Texas 78611

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

American Constructors  
11900 West Parmer Lane  
Suite 200  
Cedar Park, Texas 78613

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

Burnet Police Department New Headquarters Building

The Architect:  
(Name, legal status and address)

PGAL  
2222 Western Blvd  
Suite 300  
Austin, Texas 78745

The Owner's Designated Representative:  
(Name, address and other information)

David Vaughn  
City Manager  
City of Burnet, Texas  
1001 Buchanan Drive, Suite 4  
Burnet, Texas 78611

The Construction Manager's Designated Representative:

### ADDITIONS AND DELETIONS:

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

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

AIA Document A201<sup>™</sup>–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.

Init.



*(Name, address and other information)*

Joe Charlton  
11900 West Parmer Lane  
Suite 200  
Cedar Park, Texas 78613

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

Cris Ruebush  
PGAL  
2222 Western Blvd  
Suite 300  
Austin, Texas 78745

The Owner and Construction Manager agree as follows.

## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.



## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the 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 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

#### § 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

#### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the



items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The 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 the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall 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.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall 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 the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

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

**§ 2.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following



acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 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 shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price Amendment or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

#### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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

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

Init.



§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the 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 the Owner.

§ 2.3.2.8 The Construction Manager shall 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. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

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

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.



§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties, and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

A lump sum amount of \$25,000.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 9 (nine) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

Init.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 30 ( thirty ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

TBD % In accordance with the Supplementary Conditions

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

3.95% of the cost of the work

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

not applicable

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

not applicable

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed 100 percent ( one hundred %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
Not applicable		

## § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

The GMP amount will be established in the GMP Amendment(s) to be executed separately at a later date.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

## § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.



§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price 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 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

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

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site or at the Construction Manager's main office while working on the project, with the Owner's prior approval. *(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the 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 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.



### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### **§ 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** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 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 the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the 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 the Construction Manager shall 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 the 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 shall be subject to the 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, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### **§ 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. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 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** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs



of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 6.6.8** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

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

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

**§ 6.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in 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, 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 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 shall 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 the 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 shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the 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 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### **§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and



amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the 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" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall 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 the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

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

**§ 7.1.3** Provided that an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 40 ( forty ) days after the Architect receives the Application for Payment.

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

**§ 7.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those



payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

**§ 7.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the 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 the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent ( 5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent ( 5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

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

**§ 7.1.9** Except with the Owner's prior approval, the Construction Manager shall 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 the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect 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 the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.



## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the 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;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

## ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.



§ 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 shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ Litigation in a court of competent jurisdiction

☒ Other: *(Specify)*

Binding arbitration if subsequently agreed to by both parties under terms then determined to apply or, in the event of non-agreement, litigation in a court of competent jurisdiction.

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the 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 the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as



the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the 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 the 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, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

### **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201–2007.

#### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.3 Governing Law**

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 11.5** Other provisions:

## ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2017, General Conditions of the Contract for Construction
- .3 Supplementary Conditions to the AIA 133-2009 and A201-2017
- .4
- .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
David Vaughn City Manager  
(Printed name and title)

  
\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

\_\_\_\_\_  
Marty Burger CEO  
(Printed name and title)



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2017

## **General Conditions of the Contract for Construction**

### **for the following PROJECT:**

*(Name and location or address)*

Burnet Police Department New Headquarters Building  
1001 Buchanan Drive, Suite 4  
Burnet, Texas 7861

### **THE OWNER:**

*(Name, legal status and address)*

David Vaughn, City of Burnet, Texas  
1001 Buchanan Drive, Suite 4  
Burnet, Texas 78611

### **THE ARCHITECT:**

*(Name, legal status and address)*

Cris Ruebush, PGAL  
2222 Western Blvd  
Suite 300  
Austin, Texas 78745

### **TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS**
- 2 OWNER**
- 3 CONTRACTOR**
- 4 ARCHITECT**
- 5 SUBCONTRACTORS**
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
- 7 CHANGES IN THE WORK**
- 8 TIME**
- 9 PAYMENTS AND COMPLETION**
- 10 PROTECTION OF PERSONS AND PROPERTY**
- 11 INSURANCE AND BONDS**
- 12 UNCOVERING AND CORRECTION OF WORK**
- 13 MISCELLANEOUS PROVISIONS**

### **ADDITIONS AND DELETIONS:**

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

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

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

Init.

AIA Document A201<sup>™</sup> – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA<sup>®</sup> Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA<sup>®</sup> Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 17:48:20 on 07/09/2018 under Order No. 9734132317 which expires on 08/28/2018, and is not for resale.

User Notes:

(3B9ADA26)

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

Init.

AIA Document A201™ – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 17:48:20 on 07/09/2018 under Order No. 9734132317 which expires on 08/28/2018, and is not for resale.

User Notes:

(3B9ADA26)

## INDEX

(Topics and numbers in bold are Section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, 12.3

### Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### Access to Work

3.16, 6.2.1, 12.1

### Accident Prevention

10

### Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

### Addenda

1.1.1

### Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, 13.4

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, 15.1.6

### Administration of the Contract

3.1.3, 4.2, 9.4, 9.5

### Advertisement or Invitation to Bid

1.1.1

### Aesthetic Effect

4.2.13

### Allowances

3.8

### Applications for Payment

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

### Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### Arbitration

8.3.1, 15.3.2, 15.4

### ARCHITECT

4

### Architect, Definition of

4.1.1

### Architect, Extent of Authority

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

### Architect, Limitations of Authority and Responsibility

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

### Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

### Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

### Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

### Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

### Architect's Copyright

1.1.7, 1.5

### Architect's Decisions

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

### Architect's Inspections

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

### Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

### Architect's Interpretations

4.2.11, 4.2.12

### Architect's Project Representative

4.2.10

### Architect's Relationship with Contractor

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

### Architect's Relationship with Subcontractors

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

### Architect's Representations

9.4.2, 9.5.1, 9.10.1

### Architect's Site Visits

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

### Asbestos

10.3.1

### Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

### Award of Separate Contracts

6.1.1, 6.1.2

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

5.2

### Basic Definitions

1.1

### Bidding Requirements

1.1.1

### Binding Dispute Resolution

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

### Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, 11.1.2, 11.1.3, 11.5

### Building Information Models Use and Reliance

1.8

### Building Permit

3.7.1

### Capitalization

1.3

### Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Init.

**AIA Document A201™ – 2017.** Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. **All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 17:48:20 on 07/09/2018 under Order No. 9734132317 which expires on 08/28/2018, and is not for resale.

User Notes:

(3B9ADA26)



Certificates for Payment  
 4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7,  
 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4  
 Certificates of Inspection, Testing or Approval  
 13.4.4  
 Certificates of Insurance  
 9.10.2  
 Change Orders  
 1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3,  
 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1,  
 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2  
 Change Orders, Definition of  
 7.2.1  
 CHANGES IN THE WORK  
 2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,  
 11.5  
 Claims, Definition of  
 15.1.1  
 Claims, Notice of  
 1.6.2, 15.1.3  
 CLAIMS AND DISPUTES  
 3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4  
 Claims and Timely Assertion of Claims  
 15.4.1  
 Claims for Additional Cost  
 3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5  
 Claims for Additional Time  
 3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6  
 Concealed or Unknown Conditions, Claims for  
 3.7.4  
 Claims for Damages  
 3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3,  
 11.3.2, 14.2.4, 15.1.7  
 Claims Subject to Arbitration  
 15.4.1  
 Cleaning Up  
 3.15, 6.3  
 Commencement of the Work, Conditions Relating to  
 2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,  
 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5  
 Commencement of the Work, Definition of  
 8.1.2  
 Communications  
 3.9.1, 4.2.4  
 Completion, Conditions Relating to  
 3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,  
 9.10, 12.2, 14.1.2, 15.1.2  
 COMPLETION, PAYMENTS AND  
 9  
 Completion, Substantial  
 3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1,  
 9.10.3, 12.2, 15.1.2  
 Compliance with Laws  
 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2,  
 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3,  
 15.2.8, 15.4.2, 15.4.3  
 Concealed or Unknown Conditions  
 3.7.4, 4.2.8, 8.3.1, 10.3  
 Conditions of the Contract  
 1.1.1, 6.1.1, 6.1.4  
 Consent, Written  
 3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2,  
 15.4.4.2  
 Consolidation or Joinder  
 15.4.4  
 CONSTRUCTION BY OWNER OR BY  
 SEPARATE CONTRACTORS  
 1.1.4, 6  
 Construction Change Directive, Definition of  
 7.3.1  
 Construction Change Directives  
 1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3,  
 7.3, 9.3.1.1  
 Construction Schedules, Contractor's  
 3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
 Contingent Assignment of Subcontracts  
 5.4, 14.2.2.2  
 Continuing Contract Performance  
 15.1.4  
 Contract, Definition of  
 1.1.2  
 CONTRACT, TERMINATION OR SUSPENSION  
 OF THE  
 5.4.1.1, 5.4.2, 11.5, 14  
 Contract Administration  
 3.1.3, 4, 9.4, 9.5  
 Contract Award and Execution, Conditions Relating  
 to  
 3.7.1, 3.10, 5.2, 6.1  
 Contract Documents, Copies Furnished and Use of  
 1.5.2, 2.3.6, 5.3  
 Contract Documents, Definition of  
 1.1.1  
 Contract Sum  
 2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4,  
 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,  
 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5  
 Contract Sum, Definition of  
 9.1  
 Contract Time  
 1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5,  
 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7.3.10, 7.4, 8.1.1,  
 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2,  
 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5  
 Contract Time, Definition of  
 8.1.1  
 CONTRACTOR  
 3  
**Contractor**, Definition of  
 3.1, 6.1.2  
 Contractor's Construction and Submittal Schedules  
 3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2  
 Contractor's Employees

2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,  
10.2, 10.3, 11.3, 14.1, 14.2.1.1  
Contractor's Liability Insurance  
11.1  
Contractor's Relationship with Separate Contractors  
and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4  
Contractor's Relationship with Subcontractors  
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2,  
9.6.7, 9.10.2, 11.2, 11.3, 11.4  
Contractor's Relationship with the Architect  
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2,  
6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6,  
10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1  
Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2  
Contractor's Responsibility for Those Performing the  
Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8  
Contractor's Review of Contract Documents  
3.2  
Contractor's Right to Stop the Work  
2.2.2, 9.7  
Contractor's Right to Terminate the Contract  
14.1  
Contractor's Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,  
9.8.3, 9.9.1, 9.10.2, 9.10.3  
Contractor's Superintendent  
3.9, 10.2.6  
Contractor's Supervision and Construction  
Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,  
7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4  
Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1  
Copies Furnished of Drawings and Specifications  
1.5, 2.3.6, 3.11  
Copyrights  
1.5, 3.17  
Correction of Work  
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3,  
15.1.3.1, 15.1.3.2, 15.2.1  
Correlation and Intent of the Contract Documents  
1.2  
Cost, Definition of  
7.3.4  
Costs  
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,  
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6,  
11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14  
Cutting and Patching  
3.14, 6.2.5  
Damage to Construction of Owner or Separate  
Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4  
Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,  
11.3, 14.2.4, 15.1.7  
Damages for Delay  
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2  
Date of Commencement of the Work, Definition of  
8.1.2  
Date of Substantial Completion, Definition of  
8.1.3  
Day, Definition of  
8.1.4  
Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,  
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,  
14.2.2, 14.2.4, 15.1, 15.2  
Decisions to Withhold Certification  
9.4.1, 9.5, 9.7, 14.1.1.3  
Defective or Nonconforming Work, Acceptance,  
Rejection and Correction of  
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,  
9.10.4, 12.2.1  
Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,  
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1  
Delays and Extensions of Time  
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,  
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5  
Digital Data Use and Transmission  
1.7  
Disputes  
6.3, 7.3.9, 15.1, 15.2  
Documents and Samples at the Site  
3.11  
Drawings, Definition of  
1.1.5  
Drawings and Specifications, Use and Ownership of  
3.11  
Effective Date of Insurance  
8.2.2  
Emergencies  
10.4, 14.1.1.2, 15.1.5  
Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
10.3.3, 11.3, 14.1, 14.2.1.1  
Equipment, Labor, or Materials  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,  
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,  
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4  
Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,  
10.4, 14.3, 15.1.6, 15.2.5



Failure of Payment  
 9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2  
 Faulty Work  
 (See Defective or Nonconforming Work)  
 Final Completion and Final Payment  
 4.2.1, 4.2.9, 9.8.2, 9.10, 12.3, 14.2.4, 14.4.3  
 Financial Arrangements, Owner's  
 2.2.1, 13.2.2, 14.1.1.4  
 GENERAL PROVISIONS  
 1  
 Governing Law  
 13.1  
 Guarantees (See Warranty)  
 Hazardous Materials and Substances  
 10.2.4, 10.3  
 Identification of Subcontractors and Suppliers  
 5.2.1  
 Indemnification  
 3.17, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3  
 Information and Services Required of the Owner  
 2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,  
 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,  
 14.1.1.4, 14.1.4, 15.1.4  
 Initial Decision  
 15.2  
 Initial Decision Maker, Definition of  
 1.1.8  
 Initial Decision Maker, Decisions  
 14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5  
 Initial Decision Maker, Extent of Authority  
 14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5  
 Injury or Damage to Person or Property  
 10.2.8, 10.4  
 Inspections  
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
 9.9.2, 9.10.1, 12.2.1, 13.4  
 Instructions to Bidders  
 1.1.1  
 Instructions to the Contractor  
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2  
 Instruments of Service, Definition of  
 1.1.7  
 Insurance  
 6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,  
 11  
**Insurance, Notice of Cancellation or Expiration**  
**11.1.4, 11.2.3**  
 Insurance, Contractor's Liability  
 11.1  
 Insurance, Effective Date of  
 8.2.2, 14.4.2  
 Insurance, Owner's Liability  
 11.2  
 Insurance, Property  
 10.2.5, 11.2, 11.4, 11.5  
 Insurance, Stored Materials  
 9.3.2

INSURANCE AND BONDS  
 11  
 Insurance Companies, Consent to Partial Occupancy  
 9.9.1  
 Insured loss, Adjustment and Settlement of  
 11.5  
 Intent of the Contract Documents  
 1.2.1, 4.2.7, 4.2.12, 4.2.13  
 Interest  
 13.5  
 Interpretation  
 1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1  
 Interpretations, Written  
 4.2.11, 4.2.12  
 Judgment on Final Award  
 15.4.2  
 Labor and Materials, Equipment  
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,  
 10.2.4, 14.2.1.1, 14.2.1.2  
 Labor Disputes  
 8.3.1  
 Laws and Regulations  
 1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,  
 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,  
 15.4  
 Liens  
 2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8  
 Limitations, Statutes of  
 12.2.5, 15.1.2, 15.4.1.1  
 Limitations of Liability  
 3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,  
 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,  
 11.3, 12.2.5, 13.3.1  
 Limitations of Time  
 2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,  
 15.1.2, 15.1.3, 15.1.5  
 Materials, Hazardous  
 10.2.4, 10.3  
 Materials, Labor, Equipment and  
 1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,  
 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2  
 Means, Methods, Techniques, Sequences and  
 Procedures of Construction  
 3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2  
 Mechanic's Lien  
 2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8  
 Mediation  
 8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1,  
 15.4.1.1  
 Minor Changes in the Work  
 1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4  
 MISCELLANEOUS PROVISIONS  
 13

Modifications, Definition of  
1.1.1  
Modifications to the Contract  
1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2  
Mutual Responsibility  
6.2  
Nonconforming Work, Acceptance of  
9.6.6, 9.9.3, 12.3  
Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2  
Notice  
1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2, 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1  
Notice of Cancellation or Expiration of Insurance  
11.1.4, 11.2.3  
Notice of Claims  
1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1  
Notice of Testing and Inspections  
13.4.1, 13.4.2  
Observations, Contractor's  
3.2, 3.7.4  
Occupancy  
2.3.1, 9.6.6, 9.8  
Orders, Written  
1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1  
OWNER  
2  
Owner, Definition of  
2.1.1  
Owner, Evidence of Financial Arrangements  
2.2, 13.2.2, 14.1.1.4  
Owner, Information and Services Required of the  
2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4  
Owner's Authority  
1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7  
Owner's Insurance  
11.2  
Owner's Relationship with Subcontractors  
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2  
Owner's Right to Carry Out the Work  
2.5, 14.2.2  
Owner's Right to Clean Up  
6.3  
Owner's Right to Perform Construction and to Award

Separate Contracts  
6.1  
Owner's Right to Stop the Work  
2.4  
Owner's Right to Suspend the Work  
14.3  
Owner's Right to Terminate the Contract  
14.2, 14.4  
Ownership and Use of Drawings, Specifications and Other Instruments of Service  
1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3  
Partial Occupancy or Use  
9.6.6, 9.9  
Patching, Cutting and  
3.14, 6.2.5  
Patents  
3.17  
Payment, Applications for  
4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3  
Payment, Certificates for  
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4  
Payment, Failure of  
9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2  
Payment, Final  
4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3  
Payment Bond, Performance Bond and  
7.3.4.4, 9.6.7, 9.10.3, 11.1.2  
Payments, Progress  
9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4  
PAYMENTS AND COMPLETION  
9  
Payments to Subcontractors  
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2  
PCB  
10.3.1  
Performance Bond and Payment Bond  
7.3.4.4, 9.6.7, 9.10.3, 11.1.2  
Permits, Fees, Notices and Compliance with Laws  
2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2  
PERSONS AND PROPERTY, PROTECTION OF  
10  
Polychlorinated Biphenyl  
10.3.1  
Product Data, Definition of  
3.12.2  
Product Data and Samples, Shop Drawings  
3.11, 3.12, 4.2.7  
Progress and Completion  
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4  
Progress Payments  
9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4  
Project, Definition of  
1.1.4  
Project Representatives

Init.



4.2.10  
 Property Insurance  
 10.2.5, 11.2  
 Proposal Requirements  
 1.1.1  
**PROTECTION OF PERSONS AND PROPERTY**  
 10  
 Regulations and Laws  
 1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,  
 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8,  
 15.4  
 Rejection of Work  
 4.2.6, 12.2.1  
 Releases and Waivers of Liens  
 9.3.1, 9.10.2  
 Representations  
 3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1  
 Representatives  
 2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1  
 Responsibility for Those Performing the Work  
 3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10  
 Retainage  
 9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3  
 Review of Contract Documents and Field Conditions  
 by Contractor  
 3.2, 3.12.7, 6.1.3  
 Review of Contractor's Submittals by Owner and  
 Architect  
 3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2  
 Review of Shop Drawings, Product Data and  
 Samples by Contractor  
 3.12  
 Rights and Remedies  
 1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,  
 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,  
 12.2.4, 13.3, 14, 15.4  
 Royalties, Patents and Copyrights  
 3.17  
 Rules and Notices for Arbitration  
 15.4.1  
 Safety of Persons and Property  
 10.2, 10.4  
 Safety Precautions and Programs  
 3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4  
 Samples, Definition of  
 3.12.3  
 Samples, Shop Drawings, Product Data and  
 3.11, 3.12, 4.2.7  
 Samples at the Site, Documents and  
 3.11  
 Schedule of Values  
 9.2, 9.3.1  
 Schedules, Construction  
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
 Separate Contracts and Contractors  
 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2  
 Separate Contractors, Definition of

6.1.1  
 Shop Drawings, Definition of  
 3.12.1  
 Shop Drawings, Product Data and Samples  
 3.11, 3.12, 4.2.7  
 Site, Use of  
 3.13, 6.1.1, 6.2.1  
 Site Inspections  
 3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4  
 Site Visits, Architect's  
 3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4  
 Special Inspections and Testing  
 4.2.6, 12.2.1, 13.4  
 Specifications, Definition of  
 1.1.6  
 Specifications  
 1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14  
 Statute of Limitations  
 15.1.2, 15.4.1.1  
 Stopping the Work  
 2.2.2, 2.4, 9.7, 10.3, 14.1  
 Stored Materials  
 6.2.1, 9.3.2, 10.2.1.2, 10.2.4  
 Subcontractor, Definition of  
 5.1.1  
**SUBCONTRACTORS**  
 5  
 Subcontractors, Work by  
 1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4,  
 9.3.1.2, 9.6.7  
 Subcontractual Relations  
 5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1  
 Submittals  
 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3,  
 9.8, 9.9.1, 9.10.2, 9.10.3  
 Submittal Schedule  
 3.10.2, 3.12.5, 4.2.7  
 Subrogation, Waivers of  
 6.1.1, 11.3  
 Substances, Hazardous  
 10.3  
 Substantial Completion  
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,  
 12.2, 15.1.2  
 Substantial Completion, Definition of  
 9.8.1  
 Substitution of Subcontractors  
 5.2.3, 5.2.4  
 Substitution of Architect  
 2.3.3  
 Substitutions of Materials  
 3.4.2, 3.5, 7.3.8  
 Sub-subcontractor, Definition of  
 5.1.2  
 Subsurface Conditions  
 3.7.4  
 Successors and Assigns

13.2  
 Superintendent  
 3.9, 10.2.6  
 Supervision and Construction Procedures  
 1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,  
 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4  
 Suppliers  
 1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,  
 9.10.5, 14.2.1  
 Surety  
 5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,  
 15.2.7  
 Surety, Consent of  
 9.8.5, 9.10.2, 9.10.3  
 Surveys  
 1.1.7, 2.3.4  
 Suspension by the Owner for Convenience  
 14.3  
 Suspension of the Work  
 3.7.5, 5.4.2, 14.3  
 Suspension or Termination of the Contract  
 5.4.1.1, 14  
 Taxes  
 3.6, 3.8.2.1, 7.3.4.4  
 Termination by the Contractor  
 14.1, 15.1.7  
 Termination by the Owner for Cause  
 5.4.1.1, 14.2, 15.1.7  
 Termination by the Owner for Convenience  
 14.4  
 Termination of the Architect  
 2.3.3  
 Termination of the Contractor Employment  
 14.2.2

#### TERMINATION OR SUSPENSION OF THE CONTRACT

14  
 Tests and Inspections  
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4  
 TIME  
 8  
 Time, Delays and Extensions of  
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,  
 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5  
 Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,  
 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14,  
 15.1.2, 15.1.3, 15.4  
 Time Limits on Claims  
 3.7.4, 10.2.8, 15.1.2, 15.1.3  
 Title to Work  
 9.3.2, 9.3.3  
 UNCOVERING AND CORRECTION OF WORK  
 12  
 Uncovering of Work  
 12.1  
 Unforeseen Conditions, Concealed or Unknown  
 3.7.4, 8.3.1, 10.3  
 Unit Prices  
 7.3.3.2, 9.1.2  
 Use of Documents  
 1.1.1, 1.5, 2.3.6, 3.12.6, 5.3  
 Use of Site  
 3.13, 6.1.1, 6.2.1  
 Values, Schedule of  
 9.2, 9.3.1  
 Waiver of Claims by the Architect  
 13.3.2  
 Waiver of Claims by the Contractor  
 9.10.5, 13.3.2, 15.1.7  
 Waiver of Claims by the Owner  
 9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7  
 Waiver of Consequential Damages  
 14.2.4, 15.1.7  
 Waiver of Liens  
 9.3, 9.10.2, 9.10.4  
 Waivers of Subrogation  
 6.1.1, 11.3  
 Warranty  
 3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,  
 15.1.2  
 Weather Delays  
 8.3, 15.1.6.2  
 Work, Definition of  
 1.1.3  
 Written Consent  
 1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,  
 13.2, 13.3.2, 15.4.4.2  
 Written Interpretations  
 4.2.11, 4.2.12  
 Written Orders  
 1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1



## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

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

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

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

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

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



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

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

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

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

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

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

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

### **§ 1.6 Notice**

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

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

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

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.



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

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

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

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

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

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

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

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

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,



assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

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

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

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

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

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

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

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

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

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

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

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



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

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

### **§ 3.3 Supervision and Construction Procedures**

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

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

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 3.4 Labor and Materials**

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



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

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

### § 3.5 Warranty

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

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

### § 3.6 Taxes

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

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

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

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

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

### § 3.7.4 Concealed or Unknown Conditions

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



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

### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

### § 3.9 Superintendent

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

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

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

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

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

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



Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

### § 3.13 Use of Site

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

### § 3.14 Cutting and Patching

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

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

### § 3.15 Cleaning Up

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

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



### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

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

### § 4.2 Administration of the Contract

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

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

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the



Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 Communications

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

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

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

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

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

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

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

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

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



and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

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

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

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

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

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

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

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

### **§ 5.3 Subcontractual Relations**

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



prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

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

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

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

#### **§ 6.2 Mutual Responsibility**

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

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work,



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

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

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

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

### **§ 6.3 Owner's Right to Clean Up**

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

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

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

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

### **§ 7.2 Change Orders**

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

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

### **§ 7.3 Construction Change Directives**

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

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

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:



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

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

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

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will



affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## **ARTICLE 8 TIME**

### **§ 8.1 Definitions**

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

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

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

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

### **§ 8.2 Progress and Completion**

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

### **§ 8.3 Delays and Extensions of Time**

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

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

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

### **§ 9.2 Schedule of Values**

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



unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

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

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

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

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

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

### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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



## § 9.5 Decisions to Withhold Certification

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

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

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

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

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

## § 9.6 Progress Payments

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

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

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

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

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



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

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

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

#### § 9.7 Failure of Payment

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

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.



## **§ 9.9 Partial Occupancy or Use**

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

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

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

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

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

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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



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

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

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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



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

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

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

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

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

#### **§ 10.4 Emergencies**

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



## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

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

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

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

### § 11.2 Owner's Insurance

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

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

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



### **§ 11.3 Waivers of Subrogation**

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

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

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

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

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

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

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

### **§ 12.1 Uncovering of Work**

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

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to



the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## **§ 12.2 Correction of Work**

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

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

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

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

## **§ 12.3 Acceptance of Nonconforming Work**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.



## § 13.2 Successors and Assigns

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

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

## § 13.3 Rights and Remedies

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

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

## § 13.4 Tests and Inspections

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

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

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

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

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

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

## § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.



## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

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

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

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

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

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .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 reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,



the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 Suspension by the Owner for Convenience**

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

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

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

#### **§ 14.4 Termination by the Owner for Convenience**

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

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

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

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

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

##### **§ 15.1.1 Definition**

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

##### **§ 15.1.2 Time Limits on Claims**

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

##### **§ 15.1.3 Notice of Claims**

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



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

#### § 15.1.4 Continuing Contract Performance

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

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

#### § 15.1.5 Claims for Additional Cost

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

#### § 15.1.6 Claims for Additional Time

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

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

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

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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



Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

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

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

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

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

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

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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



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

#### § 15.4 Arbitration

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

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

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

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

#### § 15.4.4 Consolidation or Joinder

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

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

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



# **Supplementary Conditions to AIA Documents A133-2009 and A-201-2017**

**The following supplementary conditions modify, delete from and add to the Standard Form of Agreement Between Owner and Construction Manager as Constructor, AIA Document A133-2009 and the General Conditions of the Contract for Construction, AIA Document A201-2017. Where any article or section of the Standard Form of Agreement or General Conditions is modified, or any paragraph, subparagraph, or clause thereof is modified or deleted by these supplements, then the unaltered provisions of the article, paragraph, subparagraph or clause shall remain in effect except to the extent contrary to these supplementary conditions.**

## **Supplementary Conditions for AIA A133-2009:**

### **ARTICLE 1. GENERAL PROVISIONS**

1.1 is amended in its entirety to read as follows: “The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents are intended to be complimentary and what is called for by one document shall be as binding as if called for by all. In case of any conflict between any of the Contract Documents, priority of interpretation, unless specifically prioritized in any given provision or document, shall be in the following order: (1) Modifications issued after execution of this Agreement, if they modify the terms of this Contract rather than the Project scope; (2) Addenda issued prior to the execution of this Agreement, if they modify the terms of this Contract rather than the Project scope; (3) the Supplementary Conditions; (4) this Standard Form of Agreement Between Owner and Construction Manager as Constructor; (5) the General Conditions; (6) the Specifications; (7) Drawings; (8) terms included within performance and payment bonds; and (9) any additional documents generated or supplied as part of this Project, including advertisement or invitation to bid, Instructions to Bidders, sample forms, other written information furnished by the Owner in anticipation of receiving bids or proposals, and the Contractor’s bid or proposal. Notwithstanding this prioritization schedule, where a conflict is determined to exist, the most stringent provision shall apply for the benefit of the Owner.”

1.3 is amended in its entirety to read as follows:

For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term “Contractor” as used in A201–2017 shall mean the Construction Manager. Any reference to AIA document A201-2007 included herein is hereby revised to be a reference to the corresponding section of A201-2017, unless otherwise provided in the Supplementary Conditions.

## ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES

2.3.2.1 is amended in its entirety to read as follows:

This Agreement is being entered into as authorized by Texas Government Code, Chapter 2269, Subchapter B and Subchapter F, all applicable provisions of which are incorporated herein by reference for all purposes. In accordance therewith, Texas Government Code §§ 2269.255, 2269.256 and 2269.257 specifically require the Construction Manager to publicly advertise for bids or proposals for all major elements of the Work and to compete therefore if the Construction Manager desires to complete the Work. Those portions of the Work that the Construction Manager does not perform with the Construction Manager’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall provide copies of such bids to the Architect, if requested. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2.4 Professional Services is amended in its entirety to read as follows:

Sections 3.12.10 through 3.12.10.2 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

4.2.2 is amended in its entirety to read as follows:

Payments are due and payable upon presentation of the Construction Manager’s invoice, in accordance with Texas Government Code, Chapter 2251 (Texas Prompt Payment Act). Amounts remaining unpaid for longer than the period of time provided by the Texas Prompt Payment Act shall bear interest at the rate provided therein.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE



6.6.4 is amended in its entirety to read as follows:

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 13.4.3 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

7.1.3 is amended in its entirety to read as follows: “Provided that an Application for Payment is received by the Architect not later than the «30th » day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the « 30th » day of the «following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than «40 » ( «forty » ) days after the Architect receives the Application for Payment.

Notwithstanding the foregoing, all payments shall be made by the City in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251, which shall control in the event of any conflict.

#### **Supplementary Conditions for AIA A201-2017:**

#### **ARTICLE 1. GENERAL PROVISIONS**

1.1.1 is amended to change the last sentence to read as follows: “The Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other written information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor’s bid or proposal, or portions of Addenda relating to bidding or proposal requirements.”

1.1.8 is amended to change the first sentence to read as follows: “1.1.8. Initial Decision Maker. The Initial Decision Maker shall be the Architect, who shall render initial decisions on Claims in accordance with Section 15.2.”

Add 1.2.1.2 to read as follows: “1.2.1.2 In general, the Drawings are intended to nominate and establish the location, quantity and relationship of work, and the Specifications are intended to define the type and quality of materials and workmanship requirements of the work shown. In cases of conflict between the Drawings and Specifications or with either, the Contractor shall submit prompt request for information/direction to the Architect before proceeding, in accordance with Sections 4.2.11, 4.2.12 and 4.2.14. The requirements for the greatest quantity or the highest quality and/or most stringent provision shall govern unless otherwise directed.”

Add 1.2.1.3 to read as follows: “1.2.1.3 When a requirement is made by the Contract Documents that is not possible to meet, such as the requirements for an unavailable material, the Contractor shall submit prompt notice and a request for information/direction to the Architect, in accordance with Sections 4.2.11, 4.2.12 and 4.2.14.”

Add 1.2.4 to read as follows: "1.2.4 Before bidding, ordering any material or doing any work, each contractor shall verify all measurements and conditions, existing and new, at the jobsite and be responsible for the correctness of the same. No extra charge or compensation will be allowed on account of difference between actual dimensions and conditions and the ones indicated on the Drawings."

## ARTICLE 2 OWNER

Section 2.1.2 is deleted in its entirety.

Add 2.1.3 to read as follows: "2.1.3 The Owner reserves the right to observe the Work at any time. The presence of the Owner or its representatives at the project site does not imply concurrence or approval of the Work. The Contractor shall call specific items to the attention of the Architect if the Contractor requires information/direction."

Section 2.2.1 is deleted in its entirety.

Section 2.2.3 is deleted in its entirety.

Add Subparagraph 2.5.1 to read as follows: "If, after achieving Substantial Completion, the Contractor then defaults, or neglects to complete or fails to provide resources adequate to complete the Project within the adjusted Contract Time for Final Completion as defined in Subparagraph 8.1.1, the Owner may carry out the work after giving the Contractor a single seven-day written notice of the Contractor's default or neglect. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor or its Surety shall pay the difference to the Owner. If Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15."

## ARTICLE 3 CONTRACTOR

3.2.1 is amended in its entirety to read as follows: "The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to: (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during Work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Owner, as well as from the Drawings and Specifications made a part of this Contract. Any failure of the Contractor to take the



actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Owner.”

Add 3.2.1.1 to read as follows: “The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Owner. Nor does the Owner assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.”

3.5.1 is amended in its entirety to read as follows: “The Contractor warrants to the Owner and the Architect that all materials and equipment furnished under the Contract shall be in specified condition and quality, and shall be new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to the requirements of the Contract Documents. The Contractor further warrants that all workmanship shall be of the specified quality and in accordance with the Contract Documents, and shall be performed by persons well-qualified at their respective trades. Unless caused by the Contractor, the Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not performed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.”

Add 3.6.1 to read as follows: “Article 3.6 notwithstanding, the Owner, as a political subdivision of the State, is exempt from the payment of Texas Sales Tax on materials required for the Work and the GMP shall not include taxes for which the Owner is exempt.

Add the following language to the end of 3.7.1 to read as follows: “The Contractor shall be responsible for payment of any charges imposed for excessive reinspections. For purposes of this Section 3.7.1, excessive shall mean any inspections in excess of two inspections necessitated by factors within the control of the Contractor”

3.7.3 is amended in its entirety to read as follows: “3.7.3 If the Contractor performs Work that the Contractor knows or reasonably should have known to be contrary to applicable laws, statutes, ordinances, codes, rules or regulations, or lawful orders of public authorities, then the Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction.”

Add 3.9.2.1 to read as follows: “The Contractor shall notify the Owner, in writing through the Architect, of any proposed change in superintendent, including the reason therefore, prior to making such change. The superintendent shall not be changed except with the consent of the Owner, unless the superintendent ceases to be in the Contractor's employ.”

Add 3.10.1.1 to read as follows: “The construction schedule shall indicate the dates for the start and completion of the various elements of the Work, and shall be affirmed or revised monthly and upon execution of a Change Order that affects scheduled Work time.”

Add 3.10.1.2 to read as follows: The construction schedule shall provide a graphic representation of activities and events that will occur during performance of the Work in sufficient detail to show the sequencing of the various trades for each floor level, wing or work area.”

Add 3.10.1.3 to read as follows: The construction schedule shall set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

#### ARTICLE 4 – ADMINISTRATION TO THE CONTRACT

4.2.1 is amended to add the last sentence to read as follows: “Notwithstanding these responsibilities, no act or omission by the Architect shall be considered a waiver of any of the Owner’s rights or interests.”

Add 4.2.15 to read as follows: “In the Specifications or on the Drawings, where the words “as directed,” “as required,” “as approved,” “as permitted” or words of like effect are used, it is to be understood that direction, requirement, approval or permission of the Architect is intended. Similar words, such as “approved,” “acceptable,” “satisfactory,” or words of like import mean approved by, acceptable to, or satisfactory to the Architect.”

#### ARTICLE 5 – SUBCONTRACTORS

5.2.1 is amended in its entirety to read: “Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract and in accordance with Texas Government Code, Chapter 2269, Subchapter F, Sections 2269.255, 2269.256 and 2269.257, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.”

Add 5.2.5 to read as follows: “The Contractor is responsible for determining that all of the Contractor’s Subcontractors are duly licensed in accordance with the federal, state and local licensing laws.”

5.3 is amended in its entirety to read as follows: “By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the



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

Add 5.3.2 to read as follows: "Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following:

- .1 A provision providing that the Owner is a third-party beneficiary of the Subcontract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Owner shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Owner resulting from any breach of representations and warranties, expressed or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement; and,
- .2 A provision providing that the Subcontractor (or Sub-subcontractor) shall promptly disclose to the Contractor (or Subcontractor) any defect, omission, error, or deficiency in the Contract Documents or in the Work of which it has, or should have had knowledge; and,
- .3 A provision incorporating the following Sections of these *General Conditions of the Contract*: 3.2, 3.5., 3.18, and 5.4."

Add 5.3.3 to read as follows: "The Contractor shall assure the Owner, by affidavit or in such other manner as the Owner may approve, that all agreements between the Contractor and its Subcontractor(s) incorporate the provisions of Subparagraph 5.3.2 as necessary to preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the work to be performed by Subcontractors so that the subcontracting thereof will not prejudice such rights."

## ARTICLE 6 –CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

Add 6.2.6 to read as follows: “6.2.6 The Contractor and each Separate Contractor shall together, and without reliance on the Owner’s or Architect’s determination, establish the conditions of the premises before commencement of the work on each such separate contract, and the parties shall adjust all claims for damages to each others’ work between themselves, but the Owner may withhold the value of all such corrections from payments to both contractors pending settlement of disputes between the contractors concerning such damage.”

## ARTICLE 7 – CHANGES IN THE WORK

Add 7.2.4 to read as follows: “Agreement on any Change Order shall constitute a mutual release by the Contractor and the Owner for any and all liability under this Contract attributable to such facts or circumstances giving rise to the Change Order.”

7.3.3 is amended to modify the first sentence to read as follows: “If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, which must be described in the Construction Change Directive:”

## ARTICLE 8 – TIME

8.1.2 replace the word “Agreement” with “GMP Amendment”.

8.1.4 is amended to delete the words: “unless otherwise specifically defined.”

Add 8.2.4 to read as follows: “Failure by the Contractor to commence actual physical work on the Project within ten (10) days from the date of commencement, unless agreed otherwise, will entitle the Owner to consider the Contractor in substantial breach of its obligations under this Contract. In this event, the Owner may terminate the Contract in accordance with the Contract Documents.”

8.3.1 is amended in its entirety to read as follows: “If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner pending dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. Contractor shall give the Owner written notice of any such delay, including delay caused by the Architect, as soon as possible but in any event within seventy-two (72) hours of the beginning of the claimed delay.”

8.3.3 is deleted in its entirety.

Add 8.3.4 to read as follows: “Contractor has taken into account Contractor’s expected downtimes due to typical weather conditions for the location of the Project at the time that



the work is performed, equipment breakdowns, labor shortages, scheduling conflicts, material delivery delays, recognized holidays, or any other incidents or conditions that can be expected to occur on a project of this size and magnitude. The Contractor's failure to properly staff the job, failure to manage the work, or failure to allow for normal, seasonable weather delays shall not entitle the Contractor to additional Contract Time. No extensions of Contract Time due to weather delays shall be considered by the Owner unless the Owner is satisfied that the weather was significantly severe and unusual for long periods of time in which the Work is performed and that the overall Project Contract Time was, in fact, truly impacted by the severe and unusual weather." The GMP Amendment shall include the project schedule and the amount of weather days included in the schedule.

## ARTICLE 9 – PAYMENTS AND COMPLETION

Add 9.7.1 to read as follows: "Notwithstanding the other provisions of Article 9, the Owners obligation for timely payment shall be conditioned on the allowance in the Contractor's payment application procedure for thirty (30) days for handling by the Owner and five (5) days by the Architect, plus transit time between their offices."

Add 9.8.3.1 to read as follows: "Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor, Owner and Architect."

Add 9.8.3.2 to read as follows: "The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the Work function properly and in accordance with the Contract Documents. The Contractor shall furnish access for the inspection and testing as provided in this Contract. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in the Architect's issuance of a written list of unfinished Work and defective Work, commonly referred to as a "punch list", each item of which must be finished and corrected prior to Final Completion."

Add 9.8.3.3 to read as follows: "The Architect and its consultants shall conduct all Substantial Completion inspections. The Owner may elect to have other persons of its choosing participate in the inspections. Representatives of other authorities having jurisdiction may be present, at their sole discretion, at the Substantial Completion inspection or otherwise inspect the completed Work and advise the Owner whether the Work meets their respective requirements."

Add 9.8.3.4 to read as follows: "If the inspection discloses any item which is not in accordance with the requirements of the Contract Documents and will prevent the Owner from occupying or utilizing the Work for its intended use, the Contractor shall complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for a follow-up inspection by the Architect to determine Substantial Completion."

Add 9.8.3.5 to read as follows: "The Contractor shall proceed promptly and diligently to complete and correct items on the list of unfinished or defective Work. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents."

Add 9.8.3.6 to read as follows: “If more than two (2) Substantial Completion inspections are required, the Contractor shall reimburse the Owner for all costs of any subsequent reinspection if the circumstances necessitating the reinspection are based on factors within the Contractor’s control (i.e.: work not completed, defective work, etc.) or, at the Owner’s option, the costs may be deducted from payments due to the Contractor.”

Add 9.10.1.1 to read as follows: “Final Completion shall be achieved no later than thirty (30) days after Substantial Completion unless modified by a Change Order. Failure of the Contractor to achieve Final Completion within the time allowed under this Subparagraph shall entitle to Owner to consider the Contractor in substantial breach of its obligations under this Contract.”

Add 9.10.1.2 to read as follows: “The Contractor shall notify the Owner, in writing of the date when the Work has reached or will reach Final Completion and will be ready for final inspection and testing. The notice shall be given at least ten (10) days in advance of said date and shall be forwarded through the Architect, who will attach its endorsement as to whether or not it concurs in the Contractor’s statement that the Work will be ready for inspection and testing on the date stated. The Architect’s endorsement is a convenience to the Owner only and shall not relieve the Contractor of its responsibility in the matter, nor shall the Architect’s endorsement be deemed to be evidence that the Work was finally complete and ready for inspection and testing. In the event that the Architect does not concur with the Contractor’s statement, the Architect shall inform the Contractor of the basis for the Architect’s non-concurrence. The Contractor may then, at its sole option, (1) defer the inspection; or, (2) request the inspection be performed in accordance with this Subparagraph. The final inspection and testing shall be conducted in the same manner as the inspection for Substantial Completion, including, but not limited to, the requirements of Clauses 9.8.3.3, 9.8.3.4, 9.8.3.5 and 9.8.3.6 of this Contract.

Add 9.10.1.3 to read as follows: “In the event that the Architect does not find the Work acceptable under the Contract Documents and the Contract fully performed, the Contractor shall then submit a request for a follow-up inspection in accordance with and subject to Section 9.10.1.2 to determine Final Completion. If more than two (2) Final Completion inspections are required, the Contractor shall reimburse the Owner for all costs of reinspection if the circumstances necessitating the reinspection are based on factors within the Contractor’s control (i.e.: work not completed, defective work, etc.) or, at the Owner’s option, the costs may be deducted from payments otherwise due to the Contractor.”

Add 9.10.1.4 to read as follows: “Approval of Work at or as a result of any inspection required herein shall not release the Contractor or its surety from responsibility for complying with the Contract.”

9.10.4 is amended in its entirety to read as follows:

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



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

Add 9.10.6 to read as follows: “The Contractor shall keep full and accurate records of all costs incurred and items billed in connection with the performance of the Work, including records of subcontractors, which records shall be open to audit by the authorized representative of the Owner or the Owner during the performance of the Work and for twelve (12) months after Final Payment.”

Add 9.11 to read as follows: “9.11.1 Liquidated Damages. Contractor acknowledges and agrees that the Owner will suffer financial loss in an amount that is difficult to quantify if the Project is not Substantially or Finally Completed on the dates set forth in the Contract Documents. Accordingly, the Owner may assess liquidated damages against the Contractor (and its surety) in an amount equal to \$500.00 per day, as a fixed, agreed and liquidated damages and not a penalty, for each day of delay until the Work is Substantially or Finally Completed. The right to assess liquidated damages is in addition to, and not in limitation of, any right or remedy available to the Owner.”

## ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

10.4 is amended in its entirety to read as follows: “In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor’s discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. Written notice of the emergency, including an estimate of cost and probable effect of delay on the progress of the Work, shall be given by the Contractor to the Architect as soon as possible, but in no case more than three (3) days after the start of the emergency.”

## ARTICLE 11 – INSURANCE AND BONDS

Add 11.1.2.1 to read as follows: “Contractor shall provide Performance and Labor and Material Payment Bonds, each in the amount of 100% of the Contract Sum.”

Add 11.1.2.2 to read as follows: “The Surety shall have, at a minimum, a “Best Rating” of “A” as stated in the most current publication of “Best’s Key Rating Guide, Property-Casualty”. In addition, the Surety shall have a minimum “Best Financial Strength Category” of “Class V.”

Add 11.1.2.3 to read as follows: “The Performance Bond and the Payment Bond shall be made payable to the Owner.”

Add 11.1.2.4 to read as follows: “The Performance and Labor and Material Payment Bonds shall:

- (1) be issued by a surety company licensed to do business in Texas; and,
- (2) be accompanied by a current power of attorney and certified by the attorney-in-fact who executes the bond on the behalf of the surety company; and,
- (3) remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer; and,
- (4) display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond stating that:
  - (a) The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
  - (b) The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.
- (5) Notwithstanding the foregoing, any bonds required by this Contract shall meet the requirements of the Texas Government Code, as amended.”

Add 11.1.2.5 to read as follows: “The Contractor shall furnish the required bonds to the Owner at the same time as the executed Contract.”

Add 11.1.2.6 to read as follows: “The Owner may, in the Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.”

11.2.1 is amended in its entirety to read as follows: The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.



Add 11.2.1.1 to read as follows: "Liability Insurance shall include all major divisions of coverage and be on a Commercial basis including the following:

- (1) Premises - Operations.
- (2) Independent Contractor's Protective.
- (3) Products and Completed Operations.
- (4) Personal and Advertising Injury.
- (5) Contractual, including specified provision for Contractor's obligations under Paragraph 3.18.
- (6) Broad Form Property Damage including Completed Operations.
- (7) Owned, Non-owned and Hired Motor Vehicles."

Add 11.2.1.2 to read as follows: "The insurance required by Subparagraph 11.2.1 shall be written for not less than the following limits, or greater if required by law or other provisions of this Contract:

(1) COMMERCIAL GENERAL LIABILITY:

- |                                      |             |
|--------------------------------------|-------------|
| (a) General Aggregate (per project)  | \$2,000,000 |
| (b) Products/Completed Operations    | \$1,000,000 |
| (c) Personal and Advertising Injury  | \$1,000,000 |
| (d) Each Occurrence                  | \$1,000,000 |
| (e) Fire Damage (Any one fire)       | \$ 100,000  |
| (f) Medical Expense (Any one person) | \$ 5,000    |

(2) BUSINESS AUTO LIABILITY (including All Owned, Non-owned, and Hired Vehicles):

- |  |             |
|--|-------------|
| (a) Combined Single Limit                  | \$1,500,000 |
| OR   |             |
| (b) Bodily Injury & Property Damage (each) | \$ 750,000  |

(3) WORKER'S COMPENSATION:

- |                         |                                   |
|-------------------------|-----------------------------------|
| (a) State               | Statutory                         |
| (b) Employers Liability | \$100,000 Per Accident            |
|                         | \$500,000 Disease, Policy Limit   |
|                         | \$100,000 Disease, Each Employee" |

Add 11.2.1.3 to read as follows: "Certificates of Insurance shall be filed with the Owner prior to commencement of the Work. In addition to Certificates of Insurance, the Contractor shall supply a written endorsement to the Contractor's general liability insurance policy that names the Owner as an additional insured. The endorsement shall provide that the Contractor's liability insurance policy shall be primary, and that any liability insurance of the Owner shall be secondary and noncontributory."

Add 11.2.1.4 to read as follows: "The Contractor is required to obtain Worker's Compensation Insurance for the duration of the Work."

Add 11.2.1.5 to read as follows: "The Aggregate Limits of Insurance required by Subparagraph 11.2.1.2 shall apply, in total, to this Contract only. This shall be indicated on the insurance certificate or an attached policy amendment."

Add 11.2.1.6 to read as follows: “The insurance policies and Certificates of Insurance required by this Contract shall contain a provision that no material alteration, cancellation, nonrenewal, or expiration of the coverage contained in such policy or evidenced by such Certificates of Insurance shall have effect unless the Owner has been given at least thirty (30) days’ prior written notice. The Contractor shall provide a minimum of thirty (30) days written notice to the Owner of any proposed reduction of coverage limits, including every coverage limit identified in Section 11.2.1.2, or any substitution of insurance carriers.”

Add 11.1.5.2 to read as follows: “In no event shall any failure of the Owner to receive certified copies or certificates of policies required under this Article 11 or to demand receipt of such certified copies or certificates prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the Contractor's obligations to obtain insurance pursuant to this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.”

11.2, 11.2.1, 11.2.2 and 11.2.3 are deleted in their entirety and replaced with provisions to read as follows:

#### 11.2 PROPERTY INSURANCE

11.2.1 The Contractor shall purchase sufficient Builder’s Risk and other property insurance necessary to protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work.

11.2.2 The Builder’s Risk and other property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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

12.1.1 is amended in its entirety to read: “If a portion of the Work is covered contrary to the requirements specifically expressed in the Contract Documents, including inspections of work-in-progress required by all authorities having jurisdiction over the Project, then the portion of Work so covered shall, upon demand of the Architect or the authority having jurisdiction, be uncovered for observation and be replaced at the Contractor's expense without change in the Contract Time.”

#### ARTICLE 13 – MISCELLANEOUS PROVISIONS

13.1 is amended in its entirety to read as follows: “The Contract shall be governed by the law of the place where the Project is located, and venue for any claim or cause of action shall lie within Burnet County, Texas.”

13.5 is amended in its entirety to read as follows: “Payments due and unpaid under the Contract Documents shall bear interest at a rate determined in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.”



Add 13.6 to read as follows: "Under Texas law, Owner may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract (Texas Government Code, Chapter 2270). By entering into this Contract, Contractor verifies that it does not Boycott Israel, and agrees that during the term of this Contract will not Boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended."

Add 13.7 to read as follows: "For certain contracts needing City Council approval, the Owner may not accept or enter into a contract until it has received from the Contractor a completed Texas Ethics Commission ("TEC") Form 1295 complete with a certificate number assigned by the TEC pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Contractor understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the Owner from entering into this Contract."

Add 13.8 to read as follows: "The signing parties to this agreement do not intend to confer any rights upon any persons not a party to this Contract. Accordingly, this Contract shall not be construed to create any third-party beneficiaries."

Add 13.9 to read as follows: "Contractor and Subcontractors shall comply with Texas Government Code, Chapter 2258, as amended, in performing on this Project, if applicable. In accordance with Chapter 2258, as amended, the prevailing wage rates as set forth in the Contract shall be paid on this Project and shall be posted at the job site or other area generally accessible to the employees working on the Project. In the event that the Contractor or Subcontractor seeks to hire a craft or type of worker not listed in the wage rates set forth in this Contract, such entity shall, in advance of hiring the worker, request an official determination of the prevailing wage rate for the craft or type of worker from the Owner. For overtime work and legal holidays, the hourly rate shall be one and one-half times the basic hourly rate set forth in the schedule of prevailing wage rates, which is incorporated herein for all purposes.

The Contractor and any Subcontractor(s) shall keep a record showing the name, occupation, and actual per diem wages paid each worker employed by the Contractor or Subcontractor in the construction of the Project. The Owner may require an affidavit stating that the Contractor has complied with the prevailing wage rate provisions of the Contract prior to acceptance of the Project or at any time during or after completion of the Contract.

The Owner reserves the right to conduct interviews with the Contractor's and Subcontractor's employees to insure compliance with Texas Government Code, Chapter 2258, as amended, and with all applicable local, state and federal laws. Upon written request by Owner, the Contractor shall be responsible for submitting the above required records to the Owner for all employees performing work on the Project, whether employed by the Contractor or a Subcontractor. Each submittal shall be certified by the Contractor as to completeness and accuracy.

A Contractor in violation of Texas Government Code, Chapter 2258, as amended, is liable for a penalty as provided therein. Nothing herein shall preclude the Contractor or Subcontractor from paying higher wages than specified herein.

In the event that Owner receives written information or complaint attesting to a violation of the prevailing wage rate, Owner shall proceed under Texas Government Code, Chapter 2258.”

Add 13.10 to read as follows: “Contractor acknowledges and agrees that Contractor is required by Texas Local Government Code, Section 176.006 to complete a conflict of interest questionnaire, if applicable to the Contractor. This obligation shall be ongoing throughout the term of this Contract.”

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

14.2.1 is amended in its entirety to read as follows:

“The Owner may terminate the Contract, or any separable part of it, if the Contractor:

- .1 fails to complete the Work within the Contract Time specified in the Contract Documents, including any authorized adjustments; or,
- .2 fails to prosecute the Work, or any separable part of the Work, with the diligence, resources and skill that will ensure its completion within the Contract Time specified in the Contract Documents, including any authorized adjustments; or,
- .3 fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers; or,
- .4 repeatedly (defined as occurring on two or more occasions) disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or,
- .5 fails to comply with any of the other material provisions of this Contract.”

14.2.2 is amended in its entirety to read as follows: “The Owner's right to terminate this Contract under Subparagraph 14.2.1 may be exercised if the Contractor does not cure such failure within seven (7) days (or more if authorized in writing by the Owner) after receipt of the notice from the Owner specifying the general nature of the failure. The Owner shall notify the Contractor’s surety within a reasonable time. When terminating pursuant to Paragraph 14.2.1, the Owner may, without prejudice to any other rights or remedies of the Owner, and subject to any prior rights of the surety:

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



the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

## ARTICLE 15 - CLAIMS AND DISPUTES

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

15.2.1 is amended in its entirety to read as follows: “Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to litigation of any Claim unless thirty (30) days have passed after the Claim has been referred to the Architect and no decision has been rendered in writing. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

15.2.2 is amended to amend numbered clause (3) to read as follows: “forward the claim to Owner with a recommendation that the claim be approved.”

15.2.3 is amended to delete the second sentence. ?? why

15.2.4 is amended to change the last sentence to read as follows: “Upon receipt of the response or supporting data, if any, the Architect will either reject the Claim or forward the Claim to the Owner with recommendation that the Claim be approved in whole or part.”

15.2.5 is amended in its entirety to read as follows: “The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final, but shall be subject to mediation provided in Section 15.3 below and, if the parties fail to resolve their dispute through mediation, through other dispute resolution agreed to by the parties or litigation in a court of competent jurisdiction, if desired by either party.”

15.2.6 and 15.2.6.1 are deleted in their entirety.


15.2.8 is deleted in its entirety.

15.3.1 is amended in its entirety to read as follows: "Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to non-binding mediation as a condition precedent to any other form of dispute resolution or litigation."

15.3.2 is amended in its entirety to read as follows: "The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing and delivered to the other party to the Contract within thirty (30) days of the date of the Initial Decision Maker's decision provided under Section 15.2.5 above and shall subsequently be filed with the person or entity administering the mediation."

15.3.3 is deleted in its entirety.

15.4 including all its subparts (15.4.1 through 15.4.4.3) are deleted in their entirety.

<hr/>	<hr/>		7-10-18
OWNER (Signature)	Date	CONTRACTOR (Signature)	Date
<hr/>	<hr/>	<hr/>	<hr/>
David Vaughn, City Manager (Printed Name)		Marty Burger, CEO (Printed Name)	
City of Burnet		American Constructors	





## City Manager

## ITEM 4.2

David Vaughn  
City Manager  
(512)-756-6093 ext. 3208  
dvaughn@cityofburnet.com

### Agenda Item Brief

**Meeting Date:** July 24, 2018

**Agenda Item:** Discuss and consider action: Contract for the Police Department Project Construction Manager-at-Risk with American Constructors: D. Vaughn

**Background:**

**Information:** The City Council previously awarded the CMAR RFP for the new police station to American Constructors. The proposed contract is in accordance with their proposal.

**Fiscal Impact:** Pre-Construction Services = \$25,000, Construction Phase = 3.95% of the Guaranteed Maximum Price plus General Conditions.

**Recommendation:** Staff recommends approval of the contract with American Constructors.



## City Manager

## ITEM 4.3

David Vaughn  
City Manager  
(512)-756-6093 ext. 3208  
dvaughn@cityofburnet.com

### Agenda Item Brief

**Meeting Date:** July 24, 2018

**Agenda Item:** Discuss and consider action: FIRST READING OF AN ORDINANCE OF THE CITY OF BURNET, TEXAS, AMENDING CHAPTER 1 ("GENERAL PROVISIONS") OF THE BURNET CODE OF ORDINANCES, CITY OF BURNET, TEXAS, BY REPLACING SECTION 1-6 GENERAL PENALTY FOR VIOLATIONS OF CODE IN ITS ENTIRETY AND DELETING SECTION 1-11 CULPABLE MENTAL STATE NOT REQUIRED IN ITS ENTIRETY, PROVIDING SEVERABILITY, OPEN MEETINGS AND EFFECTIVE DATE CLAUSES; PROVIDING PENALTIES; AND PROVIDING FOR RELATED MATTERS: D. Vaughn

**Background:** After the City Attorney's review of the Code of Ordinances, the attorney recommended changes to the general provisions section of the codification.

**Information:** The proposed changes consolidate two sections into one and adds a higher civil penalty for violations related to the illegal dumping of refuse. Please see the attached redline version, which shows the exact changes to section 1-6.

**Fiscal Impact:** N/A

**Recommendation:** Approve the first reading of Ordinance No. 2018-13 as presented.



Sec. 1-6. - General penalty for violations of Code.

- (a) Whenever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine of not less than one dollar and not more than exceeding \$500.00.

(1) However, a fine or penalty for the violation of a provision-rule, ordinance, or police regulation that of this Code or any such ordinance that governs fire safety, zoning, or public health and sanitation, including other than the dumping of refuse, may not exceed \$2,000.00; and

(2) a fine or penalty for the violation of a rule, ordinance, or police regulation that governs the dumping of refuse may not exceed \$4,000.

- (b) However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense.

- (c) The city may bring a civil action, as necessary, to enjoin any threatened violation of this Code for the protection of public health and safety.

(d) Unless otherwise specifically set for the in the Code of Ordinances of the city, or in state law as adopted , allegations and evidence of culpable mental state are not required for proof of an offense for which the maximum fine is \$500.00 or less.

## ORDINANCE NO. 2018-13

**AN ORDINANCE OF THE CITY OF BURNET, TEXAS, AMENDING CHAPTER 1 ("GENERAL PROVISIONS") OF THE BURNET CODE OF ORDINANCES, CITY OF BURNET, TEXAS, BY REPLACING SECTION 1-6 GENERAL PENALTY FOR VIOLATIONS OF CODE IN ITS ENTIRETY AND DELETING SECTION 1-11 CULPABLE MENTAL STATE NOT REQUIRED IN ITS ENTIRETY, PROVIDING SEVERABILITY, OPEN MEETINGS AND EFFECTIVE DATE CLAUSES; PROVIDING PENALTIES; AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, the City Council of the City of Burnet hereby finds and determines it necessary to amend and replace Section 1-6 General Penalty for Violations of Code, in its entirety;

**WHEREAS**, the City Council of the City of Burnet hereby finds and determines it necessary to delete Section 1-11 Culpable Mental State Not Required, in its entirety;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:**

**Section 1.** The City's Code of Ordinances Chapter 1 ("General Provisions"), Section 1-6 General Provisions for Violations of Code shall be amended in its entirety as follows:

"Sec. 1-6. General penalty for violations of Code.

- (a) Whenever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine of not less than one dollar and not more than \$500.00 except:
  - (1) A fine or penalty for the violation of a rule, ordinance, or police regulation that governs fire safety, zoning, or public health and sanitation, other than the dumping of refuse, may not exceed \$2,000; and
  - (2) A fine or penalty for the violation of a rule, ordinance, or police regulation that governs the dumping of refuse may not exceed \$4,000.
- (b) However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense.
- (c) The city may bring a civil action, as necessary, to enjoin any threatened violation of this Code for the protection of public health and safety.
- (d) Unless otherwise specifically set forth in the Code of Ordinance of the city, or in state law as adopted, allegations and evidence of culpable mental state are not required for proof of an offense for which the maximum fine is \$500.00 or less."



**Section 2.** The City's Code of Ordinances Chapter 1 ("General Provisions"), Section 1-11 Culpable Mental State Not Required shall be deleted in its entirety.

**Section 3. Repeal of Conflicting Ordinances.** All Ordinances or parts thereof in conflict herewith are amended to the extent of such conflict only.

**Section 4. Severability.** If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

**Section 5. Open Meetings.** That it is hereby officially found and determined that the meetings at which this ordinance were passed were open to the public as required and that public notice of the time, place, and purpose of said meetings was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

**Section 6. Effective Date.** This ordinance shall take effect upon passage on second reading and publication as required by the Local Government Code and City Charter.

**PASSED AND APPROVED** on First Reading this 24<sup>th</sup> day of July, 2018.

**FINALLY PASSED AND APPROVED** on this the 14<sup>th</sup> day of August, 2018.

**CITY OF BURNET, TEXAS**

---

Crista Goble Bromley, Mayor

**ATTEST:**

---

Kelly Dix, City Secretary



## Administration

### ITEM 4.4

Evan Milliorn  
Administrative Services  
(512) 715-3200  
emilliorn@cityofburnet.com

## Agenda Item Brief

<b>Meeting Date:</b>	July 24, 2018
<b>Agenda Item:</b>	Discuss and consider action: Acceptance of a drainage easement being 0.371 acres out of Lot 2-A, Block No. 38, of the Alexander Addition to the City of Burnet, a subdivision in the City of Burnet, Burnet County, Texas as shown on the plat recorded in Document No. 201711290 to the Burnet Economic Development Corporation and more particularly described as property located in the 800 Block of South Rhomberg Street: E. Milliorn
<b>Background:</b>	<p>The drainage easement is approximately 0.371 acres located between Rhomberg Street and an unpaved portion of Silver Street right-of-way as shown on Exhibit "A". The land is currently undeveloped and slopes significantly from Rhomberg Street toward the railroad track with an "arroyo" or a natural drainage channel that flows large amounts of water in a flash flooding event.</p> <p>The natural drainage channel isn't dedicated FEMA floodplain however, a drainage report commissioned by the BEDC states that development within the channel area should be avoided and any structures placed in the channel are likely to divert flow and increase erosion of the slopes and banks.</p>
<b>Information:</b>	In order to maintain the drainage channel and facilitate safe and development of the land, the BEDC at their July 17, 2018 approved dedication of the drainage easement.
<b>Fiscal Impact:</b>	None.
<b>Recommendation:</b>	Staff concurs with the BEDC and recommends a motion by Council to accept the drainage easement.



## **DRAINAGE EASEMENT**

DATE: **July 24, 2018**

GRANTOR: **Burnet Economic Development Corporation, a type B corporation under the Texas Development Corporation Act.**

GRANTOR'S MAILING ADDRESS (including County): **1001 Buchanan Drive, Suite 4,  
Burnet County, Texas 78611**

GRANTEE: **City of Burnet, Texas**

GRANTEE'S MAILING ADDRESS (including County): **1001 Buchanan Drive Suite 4,  
Burnet, Burnet County, Texas 78611**

LIENHOLDER: **None**

CONSIDERATION: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

PROPERTY:

BEING 0.371 ACRES OUT OF LOT 2-A, BLOCK NO. 38, OF THE ALEXANDER ADDITION TO THE CITY OF BURNET, A SUBDIVISION IN THE CITY OF BURNET, BURNET COUNTY, TEXAS AS SHOWN ON THE PLAT RECORDED IN DOCUMENT NO. 201711290 TO THE BURNET ECONOMIC DEVELOPMENT CORPORATION BEING MORE PARTICULARLY DESCRIBED BY THE SURVEY ATTACHED HERETO AS EXHIBIT "A" AND THE METES AND BOUNDS DESCRIPTION ATTACHED HERETO AS EXHIBIT "B".

**GRANTOR**, for the **CONSIDERATION** paid to **GRANTOR**, hereby grants, sells, and conveys to **GRANTEE**, its successors and assigns, an exclusive, perpetual drainage easement for all purposes necessary to install, construct, maintain, repair, modify, upgrade, monitor, inspect, replace, make connections with, remove, and decommission drainage channels, drainage conveyance structures, and detention and water quality controls with all associated roads, gates, bridges, culverts, erosion control structures, and other appurtenances within the easement deemed necessary by the **GRANTEE** in, upon, under and across the **PROPERTY** more fully described and as shown in Exhibit "A" attached hereto.

**GRANTOR** and **GRANTOR's** heirs, successors, and assigns shall retain the right to use all or part of the **PROPERTY** as long as such use does not interfere with **GRANTEE's** use of the **PROPERTY** for the purposes provided for herein. **GRANTEE** shall have the right to eliminate any encroachments into the **PROPERTY** that interfere with **GRANTEE's** use of the **PROPERTY** as a Drainage Easement.

**TO HAVE AND TO HOLD** the above-described easement, together with all and singular the rights and appurtenances thereto in anyway belonging unto **GRANTEE**, and **GRANTEE's** successors and assigns forever; and **GRANTOR** does hereby bind itself, its successors and assigns to **WARRANT AND FOREVER DEFEND** all and singular the easement unto **GRANTEE**, its successor and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

When the context requires, singular nouns and pronouns include the plural.

**GRANTOR:**

---

By: Cary Johnson, President of the Burnet Economic Development Corp., a type B corporation under the Texas Development Corporation Act

THE STATE OF TEXAS     §  
  §  
COUNTY OF BURNET     §

This instrument was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Cary Johnson, President of the Burnet Economic Development Corp., a type B corporation under the Texas Development Corporation Act.

---

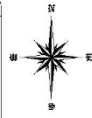
NOTARY PUBLIC STATE OF TEXAS

**After recording return to:**  
City of Burnet, Texas  
P.O. Box 1369  
Burnet, Texas 78611

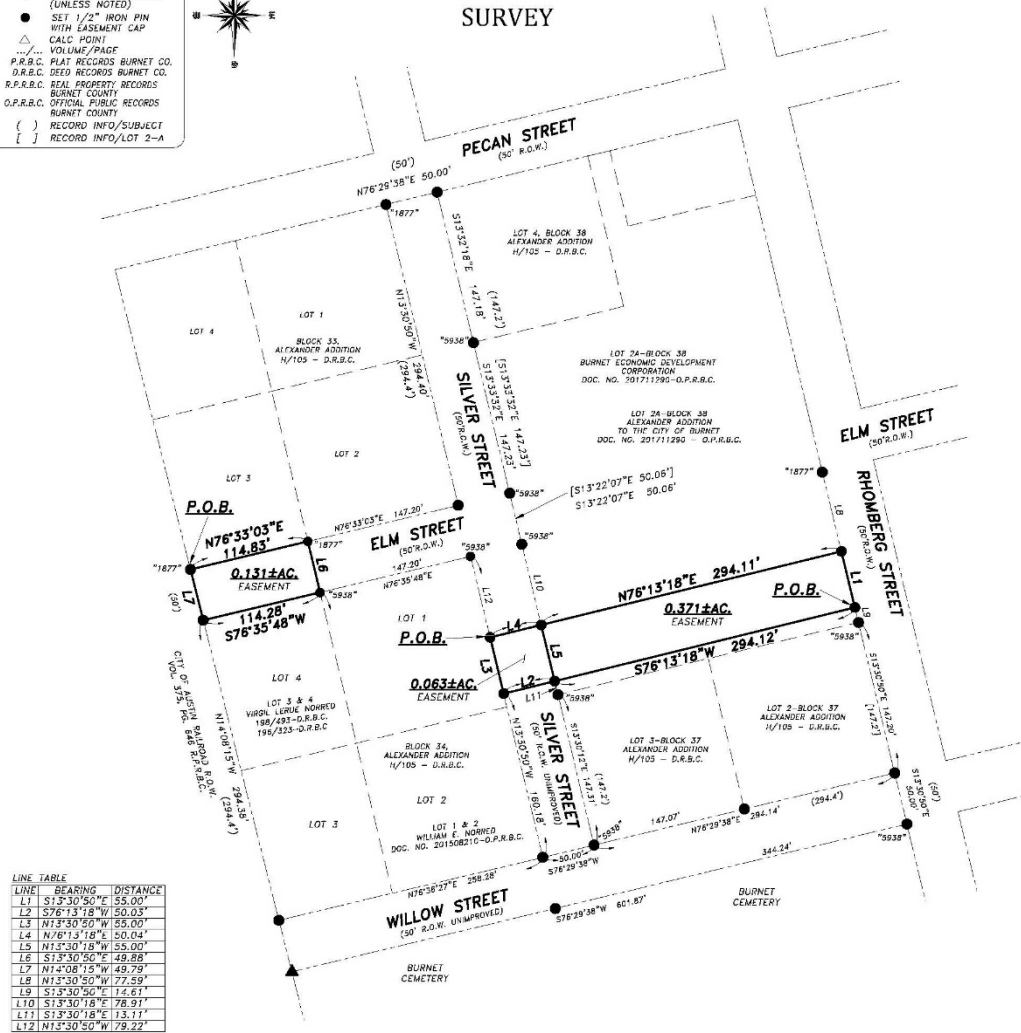


# LEGEND

- 3/8" IRON PIN FOUND
- 1/2" IRON PIN FOUND (UNLESS NOTED)
- SET 1/2" IRON PIN WITH EASEMENT CAP
- △ CALC. POINT
- VOLUME/PAGE
- P.R.R.C. PLAT RECORDS BURNET CO.
- D.R.R.C. DEED RECORDS BURNET CO.
- R.P.R.C. REAL PROPERTY RECORDS BURNET COUNTY
- O.P.R.R.C. OFFICIAL PUBLIC RECORDS BURNET COUNTY
- ( ) RECORD INFO/SUBJECT
- [ ] RECORD INFO/LOT 2-A



## EXHIBIT "A" SURVEY



NOTES:  
1) BASIS OF BEARINGS ARE TO THE NORTH AMERICAN DATUM OF 1983, TEXAS COORDINATE SYSTEM, CENTRAL ZONE.

## DRAINAGE EASEMENT EXHIBIT

LOCAL ADDRESS: RHOMBERG STREET, SILVER STREET & ELM STREET, CITY OF BURNET, BURNET COUNTY, TEXAS.

### LEGAL DESCRIPTION:

#### 0.371 ACRE DRAINAGE EASEMENT:

BEING A 0.371 ACRE EASEMENT, OUT OF LOT 2-A, BLOCK NO. 38, ALEXANDER ADDITION TO THE CITY OF BURNET, A SUBDIVISION IN THE CITY OF BURNET, BURNET COUNTY, TEXAS AS SHOWN ON PLAT RECORDED IN DOCUMENT NO. 201711290 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID LOT 2-A BEING DESCRIBED ON SAID DOCUMENT NO. 201711290 TO THE BURNET ECONOMIC DEVELOPMENT CORPORATION, SAID 0.371 ACRE DRAINAGE EASEMENT FURTHER BEING DESCRIBED BY SEPARATE METES AND BOUNDS DESCRIPTION TO ACCOMPANY THIS SURVEY OF EVEN DATE.

#### 0.063 ACRE DRAINAGE EASEMENT:

BEING A 0.063 ACRE EASEMENT, BEING OUT OF AN UNIMPROVED PORTION OF SILVER STREET, LYING BETWEEN BLOCK 38 AND BLOCK 34 OF THE ALEXANDER ADDITION TO THE CITY OF BURNET AS SHOWN ON PLAT RECORDED IN VOLUME H, PAGE 105 OF THE DEED RECORDS OF BURNET COUNTY, TEXAS, SAID 0.063 ACRE DRAINAGE EASEMENT FURTHER BEING DESCRIBED BY SEPARATE METES AND BOUNDS DESCRIPTION TO ACCOMPANY THIS SURVEY OF EVEN DATE.

#### 0.131 ACRE DRAINAGE EASEMENT:

BEING A 0.131 ACRE EASEMENT, BEING OUT OF AN UNIMPROVED PORTION OF ELM STREET, LYING BETWEEN BLOCK 33 AND BLOCK 34 OF THE ALEXANDER ADDITION TO THE CITY OF BURNET AS SHOWN ON PLAT RECORDED IN VOLUME H, PAGE 105 OF THE DEED RECORDS OF BURNET COUNTY, TEXAS SAID 0.131 ACRE DRAINAGE EASEMENT FURTHER BEING DESCRIBED BY SEPARATE METES AND BOUNDS DESCRIPTION TO ACCOMPANY THIS SURVEY OF EVEN DATE.

I HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED ON THE GROUND AND WAS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION, CUPLIN & ASSOCIATES, INC. COPYRIGHT 2018, CUPLIN & ASSOCIATES, INC. ©.

*Kyle P. Cuplin*  
KYLE P. CUPLIN, R.P.L.S. NO. 5938 DATED 07/12/2018

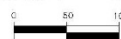


1 OF 2  
SHEET

PROJ. NO. 181029  
PREPARED FOR: CITY OF BURNET  
TECH: C. CUPLIN  
APPROVED: K. CUPLIN  
FIELDWORK PERFORMED ON: JULY 2018  
COPYRIGHT: 2018 PROFESSIONAL FIRM NO. 10126900

1500 OLLIE LANE  
MARBLE FALLS, TX. 78654  
PH. 325-388-3300/830-693-8815  
WWW.CUPLINASSOCIATES.COM

SCALE 1" = 100'



**CUPLIN & ASSOCIATES**  
LAND SURVEYORS & PLANNERS

**EXHIBIT "B"**  
**METES AND BOUNDS**

Prepared For: City of Burnet  
Project No. 181029  
Date: 7/12/2018

**0.371 ACRE DRAINAGE EASEMENT:**

**BEING A 0.371 ACRE EASEMENT, OUT OF LOT 2-A, BLOCK NO. 38, ALEXANDER ADDITION TO THE CITY OF BURNET, A SUBDIVISION IN THE CITY OF BURNET, BURNET COUNTY, TEXAS, AS SHOWN ON PLAT RECORDED IN DOCUMENT NO. 201711290 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID LOT 2-A BEING DESCRIBED ON SAID DOCUMENT NO. 201711290 TO THE BURNET ECONOMIC DEVELOPMENT CORPORATION, SAID 0.371 ACRE DRAINAGE EASEMENT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING** at a set 1/2" iron pin with "Easement" cap, along the westerly right-of-way line of Rhomberg Street, along the easterly line of said Lot 2-A, and being the southeasterly corner hereof, from whence a found 1/2" iron pin with 5938 property cap at the southeasterly corner of said Lot 2-A bears, South 13°30'50" East, a distance of 14.61';

**THENCE** South 76°13'18" West, over and across said Lot 2-A, and the southerly line hereof, a distance of 294.12' to a 1/2" iron pin set with "Easement" cap, along the easterly right-of-way line of Silver Street, at the southeasterly corner of a 0.063 acre drainage easement surveyed this even date, and being the southwesterly corner hereof, from whence a found 1/2" iron pin with "5938" property cap bears, South 13°30'18" East, a distance of 13.11';

**THENCE** North 13°30'18" West, along the easterly right-of-way line of said Silver Street, the easterly line of said 0.063 acre drainage easement as surveyed this even date, the westerly line of said Lot 2-A, and hereof, a distance of 55.00' to a 1/2" iron pin set with "Easement" cap, being the northwesterly corner hereof;

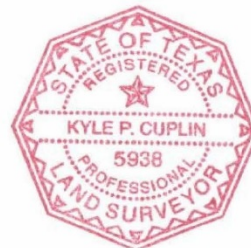
**THENCE** North 76°13'18" East, over and across said Lot 2-A, and the northerly line hereof, a distance of 294.11' to a 1/2" iron pin set with "Easement" cap, along the westerly right-of-way line of said Rhomberg Street, and being the northeasterly corner hereof;

**THENCE** South 13°30'50" East, along the westerly right-of-way line of said Rhomberg Street, the easterly line of said Lot 2-A, and hereof, a distance of 55.00' to the **POINT OF BEGINNING**, containing 0.371 of an acre, more or less.

I HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED ON THE GROUND AND WAS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION. COPYRIGHT 2018, CUPLIN & ASSOCIATES, INC. ©. BASIS OF BEARINGS ARE TO THE NORTH AMERICAN DATUM OF 1983, TEXAS COORDINATE SYSTEM, CENTRAL ZONE. A PLAT OF SURVEY OF EVEN DATE WAS PREPARED AS IS INTENDED TO ACCOMPANY THE ABOVE DESCRIBED TRACT OF LAND.

  
\_\_\_\_\_  
Kyle P. Cuplin  
Registered Professional Land Surveyor No. 5938

Dated: 7/12/2018



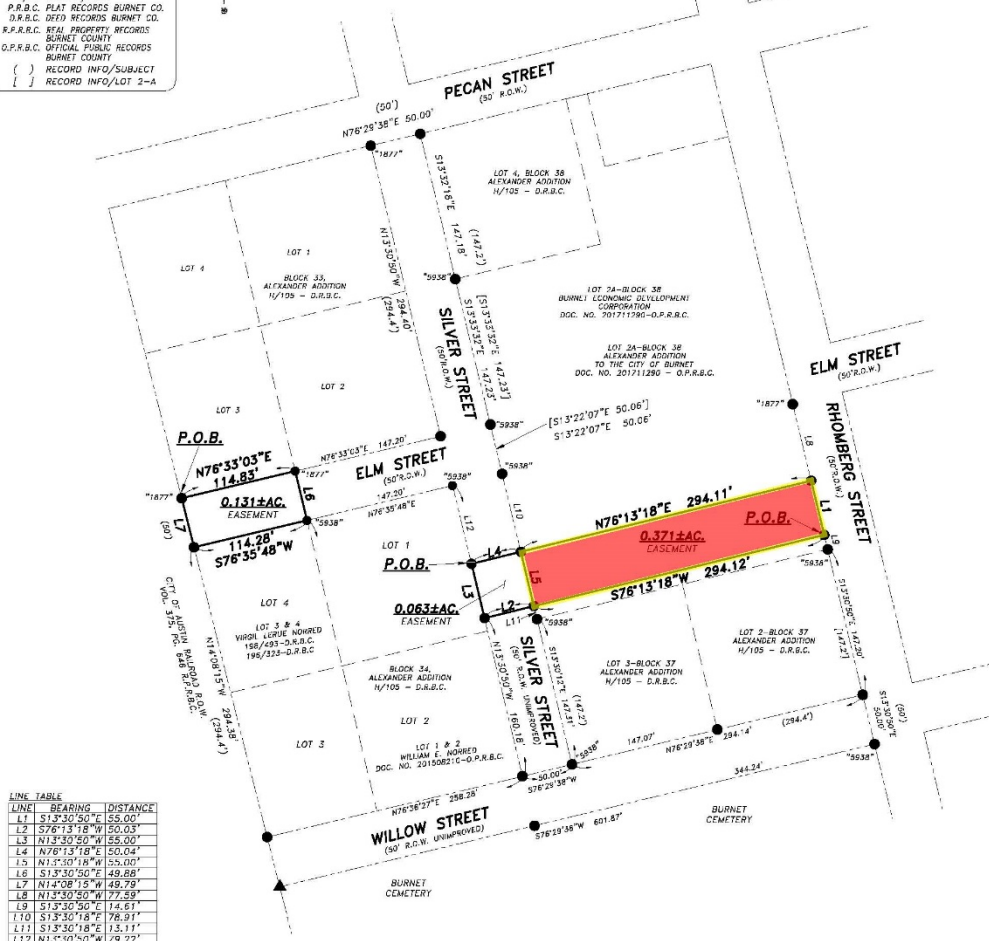


# LEGEND

- 5/8" IRON PIN FOUND
- 1/2" IRON PIN FOUND (UNLESS NOTED)
- SET 1/2" IRON PIN WITH EASEMENT CAP
- △ CALC. POINT
- VOLUME/PAGE
- P.R.B.C. PLAT RECORDS BURNET CO.
- D.R.B.C. DEED RECORDS BURNET CO.
- P.R.B.C. REAL PROPERTY RECORDS BURNET COUNTY
- O.P.R.B.C. OFFICIAL PUBLIC RECORDS BURNET COUNTY
- ( ) RECORD INFO/SUBJECT
- [ ] RECORD INFO/LOT 2-A



## EXHIBIT "A" SURVEY



LINE	BEARING	DISTANCE
L1	S13°30'50"E	55.00'
L2	S76°13'18"W	50.03'
L3	N13°30'50"W	55.00'
L4	N76°13'18"E	50.04'
L5	N13°30'18"W	55.00'
L6	S13°30'50"E	49.68'
L7	N14°08'15"W	49.79'
L8	N13°30'50"W	77.29'
L9	S13°30'50"E	14.61'
L10	S13°30'18"E	78.91'
L11	S13°30'18"E	13.11'
L12	N13°30'50"W	79.22'

NOTES:  
1) BASIS OF BEARINGS ARE TO THE NORTH AMERICAN DATUM OF 1983, TEXAS COORDINATE SYSTEM, CENTRAL ZONE.

## DRAINAGE EASEMENT EXHIBIT

LOCAL ADDRESS: RHOMBERG STREET, SILVER STREET & ELM STREET, CITY OF BURNET, BURNET COUNTY, TEXAS.

### LEGAL DESCRIPTION:

#### 0.371 ACRE DRAINAGE EASEMENT:

BEING A 0.371 ACRE EASEMENT, OUT OF LOT 2-A, BLOCK NO. 38, ALEXANDER ADDITION TO THE CITY OF BURNET, A SUBDIVISION IN THE CITY OF BURNET, BURNET COUNTY, TEXAS AS SHOWN ON PLAT RECORDED IN DOCUMENT NO. 201711290 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID LOT 2-A BEING DESCRIBED ON SAID DOCUMENT NO. 201711290 TO THE BURNET ECONOMIC DEVELOPMENT CORPORATION, SAID 0.371 ACRE DRAINAGE EASEMENT FURTHER BEING DESCRIBED BY SEPARATE METES AND BOUNDS DESCRIPTION TO ACCOMPANY THIS SURVEY OF EVEN DATE.

#### 0.063 ACRE DRAINAGE EASEMENT:

BEING A 0.063 ACRE EASEMENT, BEING OUT OF AN UNIMPROVED PORTION OF SILVER STREET, LYING BETWEEN BLOCK 38 AND BLOCK 34 OF THE ALEXANDER ADDITION TO THE CITY OF BURNET AS SHOWN ON PLAT RECORDED IN VOLUME H, PAGE 105 OF THE DEED RECORDS OF BURNET COUNTY, TEXAS, SAID 0.063 ACRE DRAINAGE EASEMENT FURTHER BEING DESCRIBED BY SEPARATE METES AND BOUNDS DESCRIPTION TO ACCOMPANY THIS SURVEY OF EVEN DATE.

#### 0.131 ACRE DRAINAGE EASEMENT:

BEING A 0.131 ACRE EASEMENT, BEING OUT OF AN UNIMPROVED PORTION OF ELM STREET, LYING BETWEEN BLOCK 33 AND BLOCK 34 OF THE ALEXANDER ADDITION TO THE CITY OF BURNET AS SHOWN ON PLAT RECORDED IN VOLUME H, PAGE 105 OF THE DEED RECORDS OF BURNET COUNTY, TEXAS SAID 0.131 ACRE DRAINAGE EASEMENT FURTHER BEING DESCRIBED BY SEPARATE METES AND BOUNDS DESCRIPTION TO ACCOMPANY THIS SURVEY OF EVEN DATE.

I HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED ON THE GROUND AND WAS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION, CUPLIN & ASSOCIATES, INC. COPYRIGHT 2018, CUPLIN & ASSOCIATES, INC. ©.

*Kyle P. Cuplin* DATED 07/12/2018  
KYLE P. CUPLIN, R.P.L.S. NO. 5538



1 OF 2  
SHEET

PROJ. NO. 181029  
PREPARED FOR: CITY OF BURNET  
TECH: C. CUPLIN  
APPROVED: K. CUPLIN  
FIELDWORK PERFORMED ON: JULY 2018  
COPYRIGHT: 2018 PROFESSIONAL FIRM NO: 10126900

1500 OLLIE LANE  
MARBLE FALLS, TX. 78654  
PH. 325-388-3300/830-693-8815  
WWW.CUPLINASSOCIATES.COM

SCALE 1" = 100'



**CUPLIN & ASSOCIATES, INC.**  
LAND SURVEYORS & PLANNERS



## Water/Wastewater Department

## ITEM 4.5

Alan Burdell  
W/WW Operations Manager  
(512)-756-2402  
aburdell@cityofburnet.com

### Agenda Item Brief

<b>Meeting Date:</b>	July 24, 2018
<b>Agenda Item:</b>	Discuss and consider action: Change order with Texas Pride for relocation of a sewer line on Silver and Pecan streets: A. Burdell
<b>Background:</b>	The existing sewer line is in poor condition and needs to be replaced from the lower water crossing on Silver Street to the railroad tracks on Pecan Street.
<b>Information:</b>	The proposed change order would eliminate the existing ten inch sewer line that runs through the creek and upsize an existing smaller line that currently runs down Silver Street. Silver Street is scheduled to be repaved next fiscal year, which would greatly increase the cost of the project at a later date.
<b>Fiscal Impact:</b>	\$85,320.00
<b>Recommendation:</b>	Staff recommends approval of change order #2 with Texas Pride Utilities.



**CHANGE ORDER NO. 002**

DATE: 7/16/2018

**Project:** Sanitary Sewer Rehabilitation (Project F)**J&C Job No.:** 0A737-0004-00**Owner:** City of Burnet**Contractor:** Texas Pride Utilities, LLC**Description of Changes:** The Contractor has presented a price for 10" pipe bursting.

**Reason for Changes:** The City determined line outside of the original scope that needed to be rehabilitated. While the Contractor is on-site, a price was requested to rehabilitate the line by pipeburst method. The Contractor's estimate and a sketch of the additional line are attached.

**Change in Contract price and time summary:****COST****TIME**

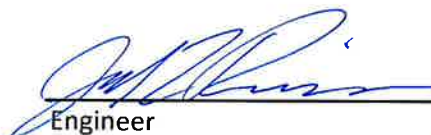
<b>Original Contract:</b>	<u>\$894,050.00</u>	<u>250</u> Calendar Days
<b>Net previous change(s):</b>	<u>\$0.00</u>	<u>0</u> Calendar Days
<b>Contract prior to this change order:</b>	<u>\$894,050.00</u>	<u>250</u> Calendar Days
<b>Net increase from this change order:</b>	<u>\$85,320.00</u>	<u>0</u> Calendar Days
<b>Revised Contract Amount:</b>	<u>\$979,370.00</u>	<u>250</u> Calendar Days
<b>Cumulative % Change in Contract:</b>	<u>9.54 %</u>	<u>0.00 %</u>
<b>Project Completion Date:</b>	<u>10/19/2018</u>	<b>Date</b>

**APPROVED BY:**

City of Burnet

**RECOMMENDED BY:**

Jones &amp; Carter, Inc.

\_\_\_\_\_  
Representative\_\_\_\_\_  
Date  
\_\_\_\_\_  
Engineer7/16/18  
Date**ACCEPTED BY:**

Texas Pride Utilities, LLC

\_\_\_\_\_  
Representative\_\_\_\_\_  
Date**Enclosures:** Attachment No. 001

**Construction of  
City of Burnet - Sanitary Sewer Rehabilitation (Project F)**

The Contractor is directed to furnish all materials, labor and equipment to pipe burst the 10" sanitary sewer line as described by the City in the attached

To implement payment for this work, the following revision is made to the Item/Quantity Sheets:

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Revised Unit Price</u>	<u>Bid Quantity</u>	<u>Revised Quantity</u>	<u>Previous Amount</u>	<u>Revised Amount</u>	<u>Net Change</u>
13	External reconnection of sanitary sewer service line, including bedding, backfill and pavement, complete in place.	EA	\$1,100.00	\$1,100.00	60	66	\$66,000.00	\$72,600.00	\$6,600.00
29	Upsize existing 6" Sanitary Sewer pipe ot 10" By Pipe Bursting, complete in place, including all labor and materials	LF	\$0.00	\$74.00	0	680	\$0.00	\$50,320.00	\$50,320.00



Construction of  
City of Burnet - Sanitary Sewer Rehabilitation (Project F)

30	Upsize existing 8" Sanitary Sewer pipe ot 10" By Pipe Bursting, complete in place, including all labor and materials	LF	\$0.00	\$74.00	0	350	\$0.00	\$25,900.00	\$25,900.00
31	Connect 10" line to existing manholes	EA	\$0.00	\$500.00	0	5	\$0.00	\$2,500.00	\$2,500.00
NET INCREASE IN CONTRACT PRICE								<u>\$85,320.00</u>	

There is no change in the Contract Period of Performance.



Texas Pride Utilities

Houston TX 77037

**TEXAS PRIDE  
UTILITIES**

# Estimate

Date

Estimate No.

7/9/2018

1929

TO:

City of Burnet  
Additional Work  
10" Pipe Bursting

Our quotation include all labor and material for the installation of the each pay item on the list below. Any additional work will require written acceptance of quotation before additional work can be performed.

Item No	Unit	Description	Qty	Unit Price	Total
1	LF	UPSIDE EXISTING 6" SANITARY SEWER PIPE TO 10" BY PIPE BURSTING COMPLETE IN PLACE INCLUDING ALL LABOR AND MATERIALS	680	74.00	50,320.00
1	LF	UPSIDE EXISTING 8" SANITARY SEWER PIPE TO 10" BY PIPE BURSTING COMPLETE IN PLACE INCLUDING ALL LABOR AND MATERIALS	350	74.00	25,900.00
2	EA	CONNECTION TO EXISTING MANHOLE	5	500.00	2,500.00
13	LF	EXTERNAL RECONNECTION OF SANITARY SEWER SERVICE LINE, INCLUDING BEDDING, BACKFILL AND PAVEMENT, COMPLETE IN PLA	6	1100.00	6600.00

Total

\$85,320.00

Phone #

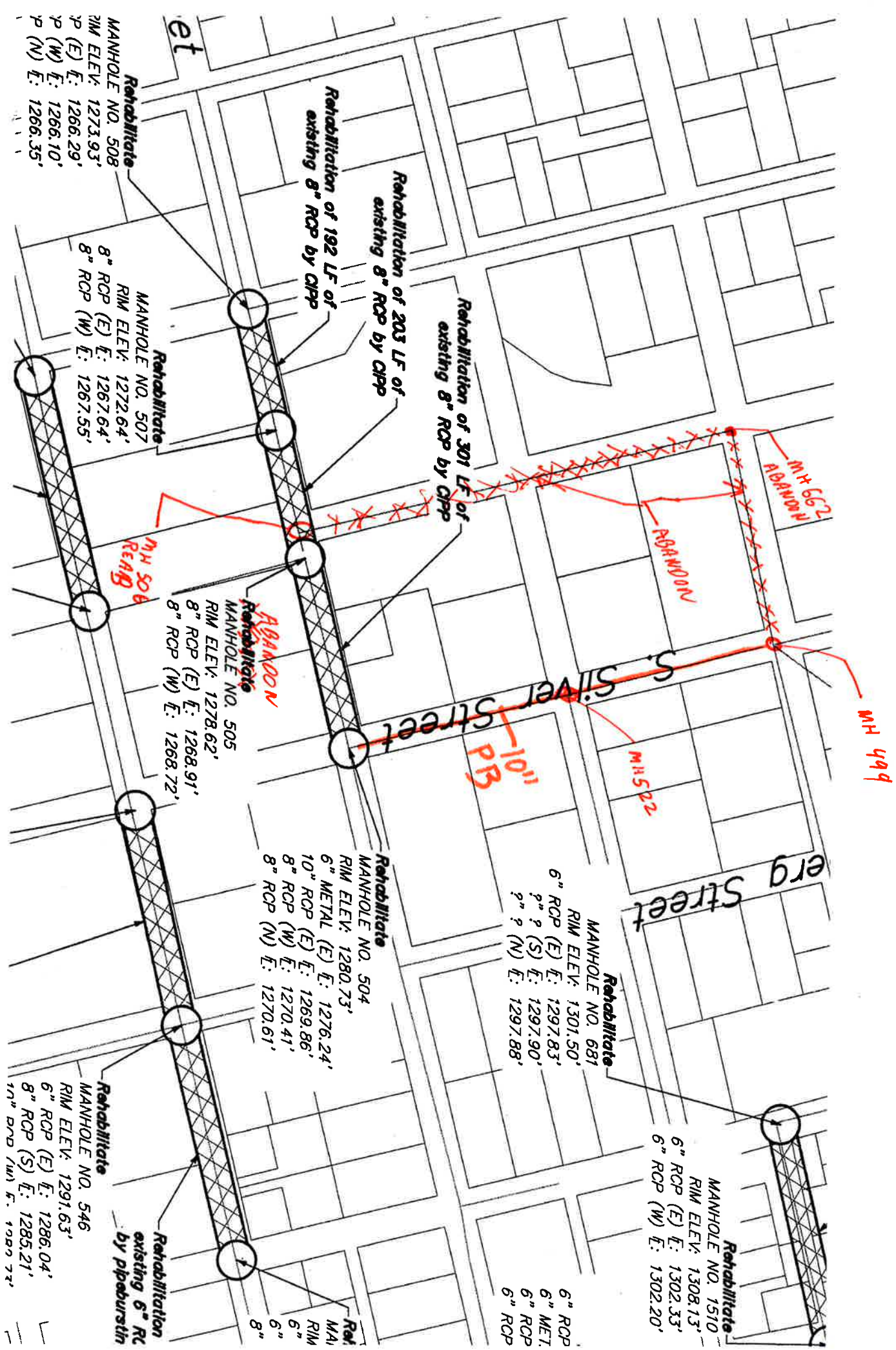
8326070707

E-mail

lgtexaspride@yahoo.com

Web Site

www.texasprideutilities.com



FROM SHEET #7





## Administration

## ITEM 4.6

Leslie Baugh  
Administration  
(512)-756-6093 ext. 3217  
lbaugh@cityofburnet.com

### Agenda Item Brief

**Meeting Date:** July 24, 2018

**Agenda Item:** Discuss and consider action: Approval of LCRA Community Development Partnership Program (CDPP) grant application.  
L. Baugh

**Background:** The LCRA CDPP grant is awarded twice a year to support local communities through grants of up to \$50,000. Applicants requesting \$5,000 or more in grant funding must supply matching funds of at least 20 percent of the grant amount. Grants larger than \$25,000 are intended for particularly impressive and noteworthy projects with a far-reaching impact on a broad community. An applicant must not have received a CDPP grant within 24 months to be eligible.

**Information:** The CDPP grant is for a live fire training tower equipped with burn rooms. The Fire Department needs not only to protect the public, they must also protect themselves. Training towers offer a variety of training exercises such as rappelling for high angle rescue, confined space, search and rescue, live fire training, forcible entry and much more. The best way to learn how to fight a fire is by fighting real fires. However with today's improved fire prevention methods and public education, there are fewer fires to fight – which means less opportunity for real-life experiences. Live fire training is essential to the health and safety of the Fire Department and the community.

The City of Burnet has not received a CDPP grant within 24 months and is eligible to apply.

**Fiscal Impact:** The City will be responsible for all costs exceeding the CDPP grant amount of \$50,000. The approximate cost for a live fire training tower equipped with burn rooms is \$110,000. Exhibit "A" attached application and costs details.

**Recommendation:** Staff recommends approval of the LCRA Community Development Partnership Program grant application and commit \$60,000 to construct the training tower contingent to

the City being awarded the LCRA CDPP grant in the amount of \$50,000 to cover total project cost.

## Exhibit "A"

### FY 2019 Grant Application

#### Organization Information

<b>Organization requesting grant</b>
<b>Name of organization</b> City of Burnet
<b>Mailing address</b> Including city and ZIP code 1001 Buchanan Drive, Suite 4 Burnet, Texas 78611
<b>County where project will be located</b>
<b>Project address</b> Including city and ZIP code 301 Wastewater Plant Way, Burnet, TX 78611
<b>Tax ID number</b>  746000460
<b>Tax status</b>  City or county
<b>Is the organization a Volunteer Fire Department registered with the Internal Revenue Service?</b>  Select One
<b>Is the organization required to file an IRS Form 990?</b>  Select One
<b>Organization website</b> Enter URL of website, if applicable. <a href="http://www.cityofburnet.com">www.cityofburnet.com</a>
<b>Organization Facebook page</b> Enter URL of Facebook page, if applicable. <a href="https://www.facebook.com/City-of-Burnet-268916636458638/">https://www.facebook.com/City-of-Burnet-268916636458638/</a>



### Organization details

Year founded  
1852

Organization mission statement

The Mission of the Burnet Fire Department is to prevent loss of life and property through proactive, efficient and effective public fire education, code enforcement, inspections and investigations and in so doing, positively affect the quality of life of the citizens of the city of Burnet.

### Contact Information

Organization primary contact

Prefix

Mr.

First name

Mark

Last name

Ingram

Title

Fire Chief

Email

mingram@cityofburnet.com

Primary phone number

(512) 756-2662

Secondary phone number

Grant request primary contact

Same as organization primary contact

No

Prefix

Ms.

First name

Leslie

Last name

Baugh

Title

Administration

Email

lbaugh@cityofburnet.com

Primary phone number

830-613-0431

Secondary phone number

512-715-3217

## Grant Request Information

### Grant request information

Total project cost  
(whole dollars only)

110000

Grant amount requested (\$50,000 maximum)  
(whole dollars only)

50000

Do you have a matching contribution?

Grants of \$5,000 or more require a minimum 20 percent match of the total project cost. In-kind contributions such as labor can be counted as a matching contribution.

Yes

If so, how much is your matching contribution? `

60000

What percentage of the total project cost is your matching contribution?

[Click the calculator.](#)

55%

Provide a brief description of your project.

Indicate specific use of funds.

Construction of a live fire training tower equipped with burn rooms for fire training exercises such as rappelling for high angle rescue, confined space, search and rescue, live fire training, forcible entry and much more.

How does this project benefit the community?

The Fire Department needs not only to protect the public, they must also protect themselves. The best way to learn how to fight a fire is by fighting real fires. However with today's improved fire prevention methods and public education, there are fewer fires to fight - which means less opportunity for real-life experiences. Live fire training is essential to the health and safety of the Fire Department and the community.

Why is this project needed?

Live fire training drills teach firefighters how to think clearly and act calmly under the stress of an emergency situation when lives are at stake and every second counts. Firefighters must effectively use their training to solve the unique problems of a fire emergency while maintaining their own safety as well as that of their fellow firefighters and any other people involved in the fire scene. This includes operating heavy equipment and tools which can cause serious injury if used improperly. There's no better way to give firefighters hands-on experience in firefighting than through this kind of controlled, supervised exercise. Live fire training towers and burn rooms are the best fire training systems available.

There is nothing like fighting a real uncontrolled fire in a structure. It takes experience fighting real uncontrolled fires to fully develop physical skills along with the ability to visually recognize important fire cues. We have in the past acquired vacant buildings for live-fire training in our city; however there is an obvious safety factor. Burning an acquired structure is a very serious matter and should not be taken lightly or entered into without an understanding of the risks involved. A fire in a burn building or live fire training tower and one in an acquired structure are entirely different. The building/tower fire is of concrete construction, which allows for better controlled fire behavior; a fire in an acquired structure can be totally unpredictable.



Firefighting is full of unexpected dangers. Training should not unnecessarily expose firefighters to harm. A burn building and/or live fire training tower is the safest way to train firefighters to experience heat, smoke, and flame fronts in a training environment, giving them a dose of reality.

How often will the project be open or accessible to the public?

Please describe public access in detail, such as, "The museum is open 8 - 5 Monday through Friday," or "The Fire Department will carry the requested equipment on emergency calls 24/7."

The fire training tower will be open to the other area departments on a scheduled basis for live fire training demonstrations, public education events, and employee recruitment site visits.

A unique example of public educational events, is the use of the training tower by our Fire Explorer Post 4700. The Fire Explorer program is a public program for high school students (incoming Freshmen through Senior year), interested in the emergency services field after graduation. It is an interactive program that teaches teens life-saving skills and educates them about what it takes to have a career in the fire service. There are opportunities within the program for skills competition as well as providing public service at local events. The Explorer program also provides scholarships for higher education on a competitive basis.

In 2017, Burnet hosted the first annual Burnet Games after regularly competing in the annual Winterfest Games in Gatlinburg, Tennessee. By hosting the Burnet Games, this opened up a fire fighting opportunity for local Texas Explorer programs to participate in skills competitions here in the Hill Country. With the addition of the training tower, our Explorers and those all over central Texas will have an opportunity to learn more skills and engage them in an incredibly rewarding awarding career field.

Who is the property owner of the project location?

City of Burnet

Will the requested CDDP grant funds enable the completion of the project?

Yes

Identify each community, city, county or region impacted by this project.

The Burnet Fire Department services Burnet County and adjacent counties including San Saba County, Williamson County, Lampasas County and Llano County. Burnet County alone has a total area of 1,021 square miles.

Unincorporated communities: Briggs, Fairland, Gandy, Joppa, Lake Victor, Mahomet, Mormon Mill, Naruna, Oakalla, Oatmeal, Scobee, Sherwood Shores, Smithwick, Spicewood, Sudduth, and Watson.

Cities: Bertram, Burnet, Cottonwood Shores, Granite Shoals, Highland Haven, Horseshoe Bay, Marble Falls, Meadowlakes, Lampasas, Liberty Hill, Llano.

County: Burnet, Lampasas, Williamson, and Llano

Region: Hill Country

What is the population of the area served by this project?

As of the 2015 census, Burnet County has the population of 45,750.

Electric Service Provider

If other, provide the name of the electric service provider.

Does the requesting organization have a reserve/operating fund?

Yes

Is the fund being used for this project?

Yes

If the fund is being used, explain how. If it is not being used, explain why.

The City is using reserves to cover all costs in excess of grant amount.

#### Additional detail

Does the project have a water conservation component such as a rainwater catchment system, low-flow toilets or energy-efficient landscaping strategies?

Yes

Does the project have an energy-efficient component such as solar energy, energy-efficient lighting, windows or insulation?

Yes

If yes, please explain in more detail.

Placement of the live fire training tower at the Wastewater Treatment Plant enables the firefighters the use of effluent water sources. The reuse of water for fire fighter training is a positive means of recycling water due to the potential large volumes of water that can be used. Recycled effluent water has the advantage of being a constant, reliable water source and reduces the amount of water extracted from the environment.

The live fire training tower site will be illuminated at night with IDA certified, dark sky lighting, amber LED's to reduce light pollution with the use of full-cutoff fixtures that cast little to no light upward, reducing light trespass and skyglow. Night time is essential to the Earth's ecosystem. Artificial lighting disrupts the rhythm of day and night that many plants and animals depend on; leading to devastating effects for birds, nocturnal animals, amphibians, mammals and insects such as fireflies. By installing dark sky lighting we will be preserving our Hill Country plants and animals. Amber LED's only the amount of light necessary, which greatly reduces wasted energy consumption and money.

Is there anything else you want the Review Committee to know about this grant proposal?

The City of Burnet Fire Department currently has an ISO rating of "Class 2." The ISO rating is from 10 - 1. With "1" being the best. Historically, very few cities ever received a "Class 1" rating. There have been times where only one city, out of the nation, would receive a "1". Presently there may be as many as 40+ cities with a "1" rating in the U.S. This is still a small percentage when one considers the thousands of communities nationwide.

Construction of the live fire training tower will allow the City of Burnet to be eligible for a "Class 1" ISO rating. A "Class 1" ISO rating will benefit the public because insurance companies calculate rates based upon the ISO rating. A lower ISO rating can lead to lower calculated rates by insurance companies.

If the City of Burnet receives an ISO "Class 1" rating, "Class 1" ISO certificates will be sent to the public with their utility bills and available online for download. The public then will be able to contact their insurance provider and submit a "Class 1" ISO rating update and possibly lower their insurance rates.



Please enter a description for each line item and the dollar amount of the CDDP grant requested for that item. The matching contribution does not have to be broken down by line item and can be included on a single line item labeled "Matching Contribution."

**Community Development Partnership Program  
Grant Request Budget Summary**

Line Item Description	CDPP Grant Request Amount	Matching Contribution <small>(must be at least 50 percent of total project cost for grants over \$50,000)</small>		Project Cost
		Dollars	In Kind	
	whole dollars only			
Live Fire Training Tower	\$50,000			
Matching Contribution		\$50,000		

## Estimated Total Construction Costs

### Live Fire Training Tower with Burn Rooms

Drill Tower	\$58,215.00
Burn Room (2)	\$10,000.00
Water Line & Fire Hydrant	\$20,928.65
Training Tower Slab	\$10,000.00
LED Amber Lights & Poles NEW	\$10,000.00
	<hr/>
	\$109,143.65



**AFFORDABLE DRILL TOWERS, LLC**

PO Box 111938

Houston, TX 77293-1938

(844)558-6937

Info@affordabledrilltowers.com

**QUOTATION****QUOTATION #** 1018**DATE** 04/25/2018**EXPIRATION DATE** 05/25/2018**ADDRESS**

Dep. Chief JJ Miller

City of Burnet Fire Dept.

PO Box 1369

Burnet, TX 78611

**SHIP TO**

Dep. Chief JJ Miller

City of Burnet Fire Dept.

2002 South Water St.

Burnet, TX 78611

Please detach top portion and return with your payment.

**SHIP VIA**  
ADT Truck**CONTACT**  
JJ Miller**PHONE**  
830-613-7829

DATE	PART NUMBER	ACTIVITY	QTY	UNIT PRICE	EXTENDED PRICE
04/25/2018	CA34	<b>34'T California Drill Tower</b> Affordable Drill Tower (5-levels, 3-floors, FDC, Standpipe & Sprinkler System, 1-Balcony, 2-Segmented Floors).	1	49,995.00	49,995.00
04/25/2018	VLSC	<b>Vertical Ladder w/Safety Cage</b> Vertical Ladder w/Safety Cage for vertical rope rescue, patient packaging, confined space training, and limited access scenarios.	1	4,995.00	4,995.00
04/25/2018	STB	<b>Steel Toe Boards</b> Complete wrap of all steel flooring, outside edge, to minimize hose lines from expanding off the drill tower, and tools and appliance from being kicked-off.	1	2,250.00	2,250.00
04/25/2018	BAL	<b>Balcony/Instructor's Platform</b> 2nd Balcony added above existing Balcony to create a more realistic apartment scenario.	1	975.00	975.00

Taking Your Training to New Heights!

**TOTAL****\$58,215.00**

Accepted By

Accepted Date



New 40ft High Cube Shipping Container

**\$5,000.00**

Buy It Now

CITY OF BURNET  
1000 BUCHANAN DR.  
512-756-2402

Invoice No.

## INVOICE

<b>Customer</b>	
Name	Water Line and Fire Hydrant Take Off
Address	
City	State ZIP
Phone	

<b>Misc</b>	
Date	
Order No.	
Rep	
FOB	

Qty	Description	Unit Price	TOTAL
1	12" DI TEE	\$ 245.05	\$ 245.05
2	12 X 6 DI TEE	\$ 210.82	\$ 421.65
1	12" DI MJ SLEEVE	\$ 152.33	\$ 152.33
1	12" AVK GATE VALVE MJ X MJ	\$ 1,345.04	\$ 1,345.04
2	6" AVK GATE VALVE MJ X MJ	\$ 465.85	\$ 931.70
6	6" EBAA MEGALUG FOR DUCTILE	\$ 36.49	\$ 218.94
8	12" EBAA MEGALUG FOR C-900	\$ 108.21	\$ 865.68
3	MUSHROOM VALVE RISER CAP	\$ 11.91	\$ 35.73
800	12" C-900 DR-18 PIPE	\$ 14.92	\$ 11,936.00
40	6" DI PIPE	\$ 11.31	\$ 452.40
10	1 GAL PIPE SOAP	\$ 11.41	\$ 114.13
2	4' AVK FIRE HYDRANT	\$ 1,505.00	\$ 3,010.00
1	BEDDING	\$ 500.00	\$ 500.00
1	GRAVEL	\$ 200.00	\$ 200.00
1	PALLET OF CEMENT	\$ 500.00	\$ 500.00

SubTotal \$ 20,928.65

Shipping

<b>Payment</b>	Select One...
Comments	
Name	
CC #	
Expires	

Tax Rate(s)	
TOTAL	\$ 20,928.65

Office Use Only

--



Invoice No. 20180720

<b>Customer</b>				<b>Misc</b>	
Name	Fire Department Training Tower Site			Date	7/20/2018
Address	301 Wastewater Plant Way			Order No.	
City	Burnet	State	TX	Rep	
Phone	512-756-2662	ZIP	78611	FOB	

Qty	Description	Unit Price	TOTAL
4	LED Amber Light & Pole Installation New & Labor	\$ 2,500.00	\$ 10,000.00
1	Training Tower Slab & Labor	\$ 10,000.00	\$ 10,000.00

SubTotal	\$ 20,000.00
----------	--------------

Shipping	
----------	--

Payment	Select One...
---------	---------------

Tax Rate(s)

Comments

Name \_\_\_\_\_

CC # \_\_\_\_\_

Expires \_\_\_\_\_

<b>TOTAL</b>	<b>\$ 20,000.00</b>
--------------	---------------------

#### Quote per Gene/Jonny

--

# City of Burnet Financial Update

July 24, 2018



**Year to Date through June 2018**



## **FINANCIAL HIGHLIGHTS**

---

### **General Fund Revenue**

Ad Valorem Taxes = \$2,277,768, increase of 17.06% over last year

Sales Tax = \$1,238,179 , 1.03% decrease from last year. Last year's number includes \$50,000 received as the result of an audit adjustment received from a taxpayer.

EMS Patient Billing Collections = \$1,350,636 compared to \$1,247,939 at this time last year. The total EMS call volume is currently 3,301 runs compared to 3,113 for the same period last year.

Allocation Transfers = \$1,938,952 , 73.55% of annual budget

Use of Cash Reserves = \$990,159 , 50.69% of annual budget; determined by expenditures

---

### **Golf Course Revenue**

Fees for Services = \$815,933 , \$99,102 increase over last year

Operating Transfer from General Fund = \$0 compared to \$50,857 last year. Last year's number has been restated to refund a portion of the transfer after a profit June, 2017. The year-to-date profit for the current year is \$32,038 .

---

### **Airport Revenue**

Net Fuel Sales = \$162,124 (sales minus the fuel purchased) compared to \$164,257 last year.

---

### **Electric Fund Revenue**

Net Fees for Services = \$2,706,906 compared to \$2,531,674 at this time last year.

Use of Cash Reserves = \$98,866 , will increase as capital project expenditures are incurred

---





## Water/Wastewater Fund Revenue

Fees for Water Services net of Cost of Water = \$1,603,161 compared to \$1,543,634 last year.

Fees for Sewer Services = \$1,367,763 compared to \$1,337,919 last year.

Use of Cash Reserves = \$0 , will be used as capital project expenditures are incurred



## **Financial Report for the Period Ending June 2018**

### Overview

The monthly financial report is directed at providing a snapshot of revenues and expenditures as well as other important financial information through the month of June 2018. Attached to this report are financial summaries that indicate the annual budget, year-to-date budget, financial activity for the fiscal year-to-date and comparison to the prior year at the same time.

### **General Fund**

#### **Revenues**

As of June 2018, General Fund revenues total \$9,513,496 or 78.25% of the annual budget. The majority of property tax revenue is collected during the months of December - February. Since this is a large source of income for the General Fund, the timing of collections has a significant impact on the overall revenue collections. During the budgeting process, the Central Appraisal District sends the City a certified tax roll that is used to calculate the anticipated property taxes to be levied and collected in the next budget cycle. This year, that tax roll contained a 15% increase mainly as the result of new property added and valuation changes that had occurred and that has been reflected in the budget for FY 2017-18. \$2,277,768 of property taxes have been collected which is 17.06% more than last year.

Sales Tax is another large source of income for the fund. Currently, the City has received \$1,238,179 of Sales Tax revenue which is an decrease of 1.03% compared to the same period last year.

EMS Billing Collections are not only a significant source of revenue, but can be very volatile and difficult to predict. Many factors can influence collections such as the number of EMS runs each month, the number of private pay patients vs the number of patients with insurance, insurance rule changes, and the type of insurance the patient may have. When these collections are below budget, it has a major effect on the overall revenue and it becomes important to offset the reduced revenue with a reduction in expenses. Collections are currently \$1,350,636 representing a \$102,697 or 8.23% increase from last year at the same time.

The final major revenue source for the General Fund is the Allocation Transfers. The majority of this revenue comes from fees assessed to the Electric Fund and the Water/Wastewater Fund in the form of Return on Investment, In-Lieu of Property Tax and In-Lieu of Franchise Tax. Since these utilities are owned by the City they are not assessed taxes that would be required if they were held by private ownership. The fees are based on the revenue and/or customer consumption numbers of the utility fund and help maintain the health of the General Fund. Other fees are assessed to funds for a proportionate amount of the Administration and Mayor and Council departments and the Shop Department. The current revenue is \$1,938,952 or 73.55% of the annual budget.

#### **Expenditures**

General Fund Expenditures total \$8,246,916 and are in line with budget. The major variable to the expenditures is the Transfers to Other Funds. These transfers are going to the Golf Course to cover the Administration Allocation and operating losses in the fund, and to the Capital Project Funds for Golf and General Government. Timing of the capital projects will have a significant effect on the actual year to date expenditures reported. The Golf Course currently has a net profit of \$32,038 compared to a year to date transfer of \$50,857 in March of last year. The transfer number for last year has been restated to reflect profit made through June, 2017.



**General Fund Expenditures**

Category	FY 2017-2018 Annual Budget	Budget May 2018	June 2018	% of Annual Budget	June 2017
Personnel	\$ 5,914,485	\$ 4,567,013	\$ 4,416,766	74.68%	\$ 4,325,296
Supplies	\$ 532,853	\$ 405,770	\$ 414,247	77.74%	\$ 404,090
Repairs & Maintenance	\$ 438,350	\$ 340,533	\$ 323,235	73.74%	\$ 368,895
Services	\$ 2,521,891	\$ 1,858,207	\$ 1,946,759	77.19%	\$ 1,821,985
Other Expense	\$ 12,250	\$ 10,718	\$ 15,181	123.93%	\$ 5,573
Property Acquisition	\$ —	\$ —	\$ 770	100.00%	\$ —
Capital Outlay	\$ 22,500	\$ 10,180	\$ 39,006	173.36%	\$ 58,090
Transfers to Other Funds	\$ 2,221,955	\$ 1,770,269	\$ 1,090,952	49.10%	\$ 1,005,519
<b>Total</b>	<b>\$ 11,664,284</b>	<b>\$ 8,962,690</b>	<b>\$ 8,246,916</b>	<b>70.70%</b>	<b>\$ 7,989,448</b>

**Delaware Springs Golf Course**

**Revenues**

The total operating revenue for the Golf Course is currently \$1,224,409. The Golf Course is showing a profit for the year of \$32,038. The transfer number for last year has been restated to reflect the profit made through June 2017 which reduced the transfer from the General Fund to \$50,857.

Two other revenue categories are showing significant increases over last year. Fees for Services are \$815,933 which is \$99,102 more than last year. Snack Bar sales are \$27,870 greater than last year. However, Sales of Merchandise is showing a decrease of \$14,932 from last year.

**Expenditures**

Expenditures are \$1,192,371 and well within the year to date budget of \$1,173,887. This also represents an increase of \$34,155 from last year at the same time.

**Electric Fund**

**Revenues**

Total revenues from Electric Sales are \$6,284,243 which is an increase of \$453,473 over last year. Each dollar of Electric Sales is made up of two components. The first is the LCRA (Lower Colorado River Authority) purchase price derived by dividing the total dollar amount billed by LCRA by the kWh purchased. That rate is applied to each class of electric customers equally and can vary depending on the charges from LCRA. The second component of the amount is the Customer Distribution Charge or CDC. This charge was adopted by Council several years ago and remains consistent until the Council votes to make a change. The CDC represents the cost of providing electric service to our customers and vary by Customer Class. Customer Class is determined by the type of use and the kWh used by the individual customer.





## City of Burnet

### Finance Department

Since a portion of the monthly electric rate is simply a pass-through to the customer based on what the City has been charged by LCRA, the Net Sales amount is a more valuable measurement than just looking at the sales dollars. Net Sales are exactly what they imply: total sales dollars less the cost of power. The result is the true amount that the City receives to cover the expenses of the Fund. Net Sales are \$2,706,906 this year.

#### Expenditures

Expenditures excluding Cost of Power are \$2,479,729 and well within the year to date budget of \$2,517,791.

#### Electric Fund Net Sales

Category	FY 2017-2018 Annual Budget	Budget May 2018	June 2018	% of Annual Budget	June 2017
Electric Sales	\$ 8,384,000	\$ 5,767,874	\$ 6,284,243	74.96%	\$ 5,830,770
Cost of Power	\$ 4,716,000	\$ 3,303,077	\$ 3,577,337	75.86%	\$ 3,299,096
Net Sales	\$ 3,668,000	\$ 2,464,797	\$ 2,706,906	73.80%	\$ 2,531,674
kWh Sold			57,668,525		53,078,723

#### Water/Wastewater Fund

##### Revenue

Year-to-date revenue net of Fund Balance is \$3,136,110 which exceeds the budget of \$2,926,627 by \$209,483. Lack of significant rain has caused the area to return to drought status. Should conservation methods become necessary, the revenue could be negatively impacted.

#### Expenditures

Expenditures for the reporting period are \$2,653,170 and well within budget. The fund has not experienced any major expenditures that are not budgeted.

#### Water/Wastewater Sales and Production

Category	FY 2017-2018 Annual Budget	Budget May 2018	June 2018	% of Annual Budget	June 2017
Water Sales	\$ 2,215,000	\$ 1,567,757	\$ 1,652,297	74.60%	\$ 1,580,573
Cost of Water	\$ 70,000	\$ 47,050	\$ 49,136	70.19%	\$ 36,939
Net Water Sales	\$ 2,145,000	\$ 1,520,707	\$ 1,603,161	74.74%	\$ 1,543,634
Wastewater Revenue	\$ 1,760,000	\$ 1,315,627	\$ 1,367,763	77.71%	\$ 1,337,919
Surface Water			140,799,000		112,533,000
Ground Water			85,699,000		101,242,000
Total Gallons Produced			226,498,000		213,775,000



## Airport Fund Revenue

Current Airport revenue is \$665,869. Sales of AvGas are showing a small increase over last year while sales of Jet fuel show a decrease.

## Expenditures

Current expenditures are \$565,925. The primary factor effecting the increase in expenditures are repairs made to hangers and the facility as a part of the RAMP grant. The RAMP grant reimbursement is received in the following year.

### Airport Fuel Sales and Gallons Sold

Category	FY 2017-2018 Annual Budget	Budget May 2018	June 2018	% of Annual Budget	June 2017
Fuel Sales	\$ 555,000	\$ 416,826	\$ 442,955	79.81%	\$ 428,789
Fuel Purchases	\$ 349,180	\$ 254,720	\$ 280,831	80.43%	\$ 264,532
Net Fuel Sales	\$ 205,820	\$ 162,106	\$ 162,124	78.77%	\$ 164,257
AvGas			44,968		44,322
Jet			64,249		76,820
Total Gallons Sold			109,217		121,142

### Fuel Sale Comparison by Fuel Type

	CY 10/01/17 - 06/30/18	PY 10/01/16 - 06/30/17	Variance
<b>AvFuel</b>			
Gallons Sold:	44,968	44,322	646
Total Revenue:	\$ 189,091	\$ 166,737	22,354
<b>Jet A Fuel</b>			
Gallons Sold:	64,249	76,820	(12,571)
Total Revenue:	\$ 253,864	\$ 262,052	\$ (8,188)



## Cash & Investment Report

### June 2018

Acct #	Bank	Account Name	Account Type	Balance June 2018	Date Purchased	Maturity Date	Interest Rate
Unrestricted Accounts							
984	FSB	Operating Cash	Checking	\$ 3,263,531.49	N/A	N/A	0.10%
2329	FSB	Golf Course Petty Cash	Checking	\$ 1,776.09	N/A	N/A	—%
2535	FSB	Operating Reserve	M/M	\$ 384,133.93	N/A	N/A	0.20%
2352	FSB	Delaware Springs-Credit Card Acct	Checking	\$ —	N/A	N/A	—%
2378	FSB	Airport - Credit Card Acct	Checking	\$ —	N/A	N/A	—%
2386	FSB	Utility - Credit Card Acct	Checking	\$ —	N/A	N/A	—%
2469	FSB	Court - Credit Card Acct	Checking	\$ —	N/A	N/A	—%
2711100002	TexPool	Operating Cash	Investment	\$ 2,016,222.23	N/A	N/A	1.8110%
	Total			<u>\$ 5,665,663.74</u>			
Restricted by Council Action							
2711100004	TexPool	Operating Reserve	Investment	\$ 1,009,994.19	N/A	N/A	1.8110%
	Total Restricted by Council Action			<u>\$ 1,009,994.19</u>			
	Total Unrestricted Cash			<u>\$ 6,675,657.93</u>			
75 Day Reserve Requirement Net of Airport				\$ 2,956,612	\$ 2,576,654.74		
90 Day Reserve Requirement Net of Airport				\$ 3,548,502	\$ 1,984,764.74		
Airport Claim on Cash				\$ 132,397			





# City of Burnet

## Finance Department

Acct #	Bank	Account Name	Account Type	Balance June 2018	Date Purchased	Maturity Date	Interest Rate
Restricted by Purpose or Law							
1453	FSB	Bond Reserve	M/M	\$ 345,089.71	N/A	N/A	0.20%
2188	FSB	Self Funded Equipment	M/M	\$ 474,919.63	N/A	N/A	0.20%
2402	FSB	Hotel / Motel	M/M	\$ 45,523.27	N/A	N/A	0.20%
2711100005	TexPool	Hotel / Motel	Investment	\$ 100,168.01	N/A	N/A	1.8110%
2451	FSB	Construction Account	Checking	\$ 104,884.47	N/A	N/A	—%
2485	FSB	PD Seizure	M/M	\$ 7,908.56	N/A	N/A	0.20%
2493	FSB	Municipal Court Special Revenue	M/M	\$ 41,190.33	N/A	N/A	0.20%
2519	FSB	Impact Fees - Water	M/M	\$ 51,467.35	N/A	N/A	0.20%
2543	FSB	Airport Reserve	M/M	\$ 74,703.45	N/A	N/A	0.20%
2711100009	TexPool	Airport Reserve	Investment	\$ 551,553.46	N/A	N/A	1.8110%
2568	FSB	Benevolent Fund	Checking	\$ —	N/A	N/A	—%
2576	FSB	Interest & Sinking Acct	M/M	\$ 239,266.44	N/A	N/A	0.20%
2584	FSB	Impact Fees - Wastewater	M/M	\$ 5,884.36	N/A	N/A	0.20%
2592	FSB	BEDC	Super NOW	\$ 220,159.46	N/A	N/A	0.10%
2711100008	TexPool	BEDC	Investment	\$ 800,000.00	N/A	N/A	1.8110%
2634	FSB	Benefit Trust Account	M/M	\$ —	N/A	N/A	—%
2675	FSB	Police Department Explorer Program	M/M	\$ 14,266.95	N/A	N/A	—%
2691	FSB	Fire Department Explorer Program	M/M	\$ 8,489.53	N/A	N/A	0.20%
3012	FSB	Franchise Fee Account	Super NOW	\$ 75,898.56	N/A	N/A	0.10%
58776	FSB	Fire Dept Community Acct	M/M	\$ 18,725.59	N/A	N/A	—%
2711100007	TexPool	TWDB	Investment	\$ 66,096.93	N/A	N/A	1.8110%
2711100006	TexPool	TWDB	Investment	\$ 40,130.00	N/A	N/A	1.8110%
143033000	US Bank	City of Burnet, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2010 Escrow Account	Investment	\$ 3,087.81	N/A	N/A	0.34%
82-020-01-0	Bank of Texas	City of Burnet Ctr 2012 TWDB Escrow	Investment	\$ 265,625.97	N/A	N/A	0.37%
Total Restricted Cash				\$ 3,555,039.84			
Total All Cash				\$ 10,230,697.77			



## Use of Cash Reserves

Project	Budget	Funds from Other Sources	Net Cost	Received from Other Sources	YTD June 2018		Remaining	Estimated EOY Cash
					Expense	Encumbered		
<b>Cash Reserves in excess of 90 days</b>								<b>1,984,765</b>
<b>General Fund</b>								
Contingency	\$ 100,000		\$ 100,000				\$ 100,000	
City Hall Remodel	\$ 10,000		\$ 10,000	\$ —	\$ 12,044		\$ —	
CR 200 Drainage	\$ 25,000		\$ 25,000	\$ —	\$ 22,603		\$ —	
Police Facility Reserve Account	\$ 500,000		\$ 500,000		\$ 20,760		\$ 479,240	
Christ-Yoder Animal Shelter	\$ 10,000		\$ 10,000		\$ —		\$ 10,000	
Animal Shelter Upgrade	\$ 35,000		\$ 35,000		\$ 25,875		\$ 9,125	
Security Upgrade Narcotics	\$ 25,000		\$ 25,000		\$ 19,602		\$ 5,398	
Streets	\$ 450,000		\$ 450,000					
Westfall Street				\$ —	\$ 198,189	\$ —		
Kincheloe Street				\$ —	\$ 11,495			
Lewis Street				\$ —	\$ 18,450			
Other				\$ —	\$ 69,202	\$ —	\$ 152,664	
Bruce Cove Drainage	\$ 25,000		\$ 25,000	\$ —	\$ 3,200		\$ —	
New Dump Trucks (3)	\$ 380,000		\$ 380,000	\$ —	\$ 368,532	\$ —	\$ —	
Parks Improvements	\$ 150,000	\$ 50,000	\$ 100,000					
Live Oak Park				\$ 50,000	\$ 61,562	\$ —		
Hamilton Creek Walking Trail				\$ —	\$ 6,669	\$ —		
Basketball Goals				\$ —	\$ 2,956	\$ —	\$ 78,813	
YMCA Capital Maintenance	\$ 50,000		\$ 50,000		\$ 30,422		\$ 19,578	
Total General Fund	\$ 1,760,000	\$ 50,000	\$ 1,710,000	\$ 50,000	\$ 871,561	\$ —	\$ 854,818	\$ 1,129,947



# City of Burnet

## Finance Department

Project	Budget	Funds from Other Sources	Net Cost	YTD June 2018			Remaining	Estimated EOY Cash
				Received from Other Sources	Expense	Encumbered		
<b>Water/Wastewater Fund</b>			\$	—				
SSES Line Improvements	\$ 850,000	\$ 350,000	\$ 500,000	\$ 350,000	\$ 27,596	\$ —	\$ 472,404	
SSES Project F Line Replacement	\$ 1,300,000	\$ 1,300,000	\$ —	\$ —	\$ 439,674	\$ —	\$ —	
Total Water/Wastewater Fund	\$ 2,150,000	\$ 1,650,000	\$ 500,000	\$ 350,000	\$ 467,270	\$ —	\$ 472,404	
<b>Electric Fund</b>			\$	—				
Electric Subdivision Costs	\$ 175,000	\$ 50,000	\$ 125,000					
Westfall Cottages				\$ 65,821				
Taco Bell				\$ 14,357				
Delaware Springs Phase 2				\$ 1,636				
301 S. Hill				\$ 5,900				
Other				\$ 11,152				
Total Electric Fund	\$ 175,000	\$ 50,000	\$ 125,000	\$ —	\$ 98,866	\$ —	\$ 26,134	
<b>Golf Course</b>								
Delaware Springs Improvements	\$ 200,000	\$ —	\$ 200,000					
Bunker Renovation				\$ 132,772				
Irrigation System				\$ 26,077				
Maintenance Barn Lights				\$ 8,000				
Total Golf Course	\$ 200,000	\$ —	\$ 200,000	\$ —	\$ 166,849	\$ —	\$ 33,151	\$ 598,258
<b>Total Use of Reserve Cash</b>	<b>\$ 4,285,000</b>	<b>\$ 1,750,000</b>	<b>\$ 2,535,000</b>	<b>\$ 400,000</b>	<b>\$ 1,604,546</b>	<b>\$ —</b>	<b>\$ 1,386,507</b>	<b>\$ 598,258</b>

**NOTE:** Expenditures for the SSES Project F Line Replacement are being paid out of current excess cash. The Council has adopted a Reimbursement Resolution to repay Cash Reserves when the loan funds are received.





**FINANCIAL REPORT**

June 2018

	Budget		Actual		
	Annual Budget	YTD June 2018	YTD June 2018	% of YTD Budget	YTD June 2017
<b>UNRESTRICTED FUNDS</b>					
<b>GOVERNMENTAL ORGANIZATIONAL UNIT</b>					
<b>General Fund</b>					
Operating Revenues	\$ 10,204,027	\$ 8,083,219	\$ 8,523,337	105.44 %	\$ 7,947,432
Use of Fund Balance	\$ 1,953,500	\$ 1,417,965	\$ 990,159	69.83 %	\$ 853,903
Total Revenue	\$ 12,157,527	\$ 9,501,184	\$ 9,513,496	100.13 %	\$ 8,801,335
Operating Expenditures	\$ 9,574,076	\$ 7,276,959	\$ 7,258,506	99.75 %	\$ 7,073,751
Debt Service	\$ —	\$ —	\$ —	— %	\$ —
Total Operating Expense	\$ 9,574,076	\$ 7,276,959	\$ 7,258,506	99.75 %	\$ 7,073,751
Transfers to Capital Project Funds	\$ 1,935,000	\$ 1,549,856	\$ 988,410	63.77 %	\$ 853,903
<b>Net Operating Profit / (Loss)</b>	<b>\$ 648,451</b>	<b>\$ 674,369</b>	<b>\$ 1,266,580</b>	<b>187.82 %</b>	<b>\$ 873,681</b>
Transfer to Golf - Operating	\$ 155,208	\$ 135,875	\$ —	— %	\$ 50,857
<i>Net Excess/(Deficit)</i>	<i>\$ 493,243</i>	<i>\$ 538,494</i>	<i>\$ 1,266,580</i>	<i>235.21 %</i>	<i>\$ 822,824</i>
<b>Delaware Springs Golf Course</b>					
Operating Revenues	\$ 1,435,748	\$ 1,058,188	\$ 1,224,409	115.71 %	\$ 1,107,359
Operating Expenditures	\$ 1,590,955	\$ 1,173,887	\$ 1,192,371	101.57 %	\$ 1,158,216
Debt Service	\$ —	\$ —	\$ —	— %	\$ —
Total Operating Expense	\$ 1,590,955	\$ 1,173,887	\$ 1,192,371	101.57 %	\$ 1,158,216
<b>Net Operating Profit / (Loss)</b>	<b>\$ (155,207)</b>	<b>\$ (115,699)</b>	<b>\$ 32,038</b>	<b>(27.69)%</b>	<b>\$ (50,857)</b>
Operating Transfer from General Fund	\$ 155,208	\$ 135,875	\$ —	— %	\$ 50,857
<i>Net Excess/(Deficit)</i>	<i>\$ —</i>	<i>\$ 20,176</i>	<i>\$ 32,038</i>	<i>158.79 %</i>	<i>\$ —</i>
<b>General Government Capital Fund</b>					
Operating Revenues	\$ 50,000	\$ —	\$ 50,000	50,000.00 %	\$ —
Transfer from General Fund	\$ 1,710,000	\$ —	\$ 821,561	821,561.00 %	\$ 628,183
Total Revenue	\$ 1,760,000	\$ —	\$ 871,561	871,561.00 %	\$ 628,183



# City of Burnet

## Finance Department

	Budget		Actual		
	Annual Budget	YTD June 2018	YTD June 2018	% of YTD Budget	YTD Apr 2017
Operating Expenditures	\$ 1,760,000	\$ —	\$ 871,561	871,561.00 %	\$ 623,165
Capital Project Gain/(Loss)	\$ —	\$ —	\$ —	— %	\$ 5,018
<b>Golf Course Capital Fund</b>				— %	
Transfer from General Fund	\$ 225,000	\$ —	\$ 166,849	166,849.00 %	\$ 225,720
Operating Expenditures	\$ 225,000	\$ —	\$ 166,849	166,849.00 %	\$ 225,720
Capital Project Gain/(Loss)	\$ —	\$ —	\$ —	— %	\$ —
<b>ORGANIZATIONAL UNIT NET CHANGE</b>	<b>\$ 493,243</b>	<b>\$ 558,670</b>	<b>\$ 1,298,618</b>	<b>232.45 %</b>	<b>\$ 827,842</b>
<b>ELECTRIC ORGANIZATIONAL UNIT</b>					
<b>Electric Fund</b>					
Operating Revenues	\$ 8,561,200	\$ 5,892,909	\$ 6,452,009	109.49 %	\$ 5,971,029
Use of Fund Balance	\$ 125,000	\$ 74,643	\$ 98,866	132.45 %	\$ 110,579
Total Revenue	\$ 8,686,200	\$ 5,967,552	\$ 6,550,875	109.77 %	\$ 6,081,608
Operating Expenditures	\$ 8,049,656	\$ 5,709,810	\$ 5,921,785	103.71 %	\$ 5,621,547
Debt Service	\$ 48,554	\$ 36,415	\$ 36,415	100.00 %	\$ 50,477
Total Operating Expense	\$ 8,098,210	\$ 5,746,225	\$ 5,958,200	103.69 %	\$ 5,672,024
Transfers to Capital Project Fund	\$ 125,000	\$ 74,643	\$ 98,866	132.45 %	\$ 110,579
Net Operating Profit / (Loss)	\$ 462,990	\$ 146,684	\$ 493,809	336.65 %	\$ 299,005
<b>Electric Capital Project Fund</b>					
Contributions	\$ 50,000	\$ —	\$ —	— %	\$ 73,149
Transfer from Electric Fund	\$ 125,000	\$ —	\$ 98,866	98,866.00 %	\$ 110,579
Total Revenue	\$ 175,000	\$ —	\$ 98,866	98,866.00 %	\$ 183,728
Operating Expenditures	\$ 175,000	\$ —	\$ 98,866	98,866.00 %	\$ 171,505
Capital Project Gain/(Loss)	\$ —	\$ —	\$ —	— %	\$ 12,223
<b>ORGANIZATIONAL UNIT NET CHANGE</b>	<b>\$ 462,990</b>	<b>\$ 146,684</b>	<b>\$ 493,809</b>	<b>336.65 %</b>	<b>\$ 311,228</b>



# City of Burnet

## Finance Department

		Budget		Actual		
		Annual Budget	YTD June 2018	YTD June 2018	% of YTD Budget	YTD Apr 2017
<b>WATER/WASTEWATER ORGANIZATIONAL UNIT</b>						
<b>Water/Wastewater</b>						
Operating Revenues	\$	4,076,700	\$ 2,926,627	\$ 3,136,110	107.16 %	\$ 2,983,499
Use of Fund Balance	\$	500,000	\$ 361,449	\$ —	— %	\$ 67,339
Total Revenue	\$	4,576,700	\$ 3,288,076	\$ 3,136,110	95.38 %	\$ 3,050,838
Operating Expenditures	\$	2,648,678	\$ 1,937,527	\$ 1,971,975	101.78 %	\$ 1,812,544
Debt Service	\$	1,055,035	\$ 791,501	\$ 681,195	86.06 %	\$ 764,941
Total Operating Expense	\$	3,703,713	\$ 2,729,028	\$ 2,653,170	97.22 %	\$ 2,577,485
Transfers to Capital Project Fund	\$	500,000	\$ 375,000	\$ —	— %	\$ 67,339
Net Operating Profit / (Loss)	\$	372,987	\$ 184,048	\$ 482,940	262.40 %	\$ 406,014
<b>Water/Wastewater Capital Project Fund</b>						
Transfer from Water/Wastewater Fund	\$	500,000	\$ —	\$ —	— %	\$ 67,339
Other Revenue	\$	40,000	\$ —	\$ 88,477	88,477.00 %	\$ 118,084
Use of Loan Proceeds	\$	1,650,000	\$ —	\$ 495,034	495,034.00 %	\$ 236,460
Total Revenue	\$	2,190,000	\$ —	\$ 583,511	583,511.00 %	\$ 421,883
Operating Expenditures	\$	2,190,000	\$ —	\$ 509,269	509,269.00 %	\$ 349,637
Capital Project Gain/(Loss)	\$	—	\$ —	\$ 74,242	74,242.00 %	\$ 72,246
<b>ORGANIZATIONAL UNIT NET CHANGE</b>		\$ 372,987	\$ 184,048	\$ 557,182	302.74 %	\$ 478,260
<b>AIRPORT ORGANIZATIONAL UNIT</b>						
<b>Airport Fund</b>						
Operating Revenues	\$	791,050	\$ 593,217	\$ 665,869	112.25 %	\$ 584,453
Use of Fund Balance	\$	—	\$ —	\$ —	— %	\$ —
Total Revenue	\$	791,050	\$ 593,217	\$ 665,869	112.25 %	\$ 584,453
Operating Expenditures	\$	669,083	\$ 485,933	\$ 546,219	112.41 %	\$ 454,872
Debt Service	\$	26,275	\$ 19,706	\$ 19,706	100.00 %	\$ 16,721





# City of Burnet

## Finance Department

	Budget		Actual		
	Annual Budget	YTD June 2018	YTD June 2018	% of YTD Budget	YTD Apr 2017
Total Expense	\$ 695,358	\$ 505,639	\$ 565,925	111.92 %	\$ 471,593
Operating Excess/(Deficit)	\$ 95,692	\$ 87,578	\$ 99,944	114.12 %	\$ 112,860
Transfers to Capital Project Fund	\$ —	\$ —	\$ —	— %	\$ —
Net Operating Profit / (Loss)	\$ 95,692	\$ 87,578	\$ 99,944	114.12 %	\$ 112,860
					— %
					— %
<b>Airport Capital Project Fund</b>					
Revenues	\$ —	\$ —	\$ —	— %	\$ 31,559
Expenses	\$ —	\$ —	\$ —	— %	\$ 2,364
Capital Project Gain/(Loss)	\$ —	\$ —	\$ —	— %	\$ 29,195
					— %
<b>ORGANIZATIONAL UNIT NET CHANGE</b>	<b>\$ 95,692</b>	<b>\$ 87,578</b>	<b>\$ 99,944</b>	<b>114.12 %</b>	<b>\$ 142,055</b>
<b>UNRESTRICTED FUND EXCESS/ (DEFICIT)</b>	<b>\$ 1,424,912</b>	<b>\$ 976,980</b>	<b>\$ 2,449,553</b>	<b>250.73 %</b>	<b>\$ 1,759,385</b>
<b>OTHER ORGANIZATIONAL UNITS</b>					
<b>Hotel/Motel Fund</b>					
Revenues	\$ 364,475	\$ 99,149	\$ 328,098	330.91 %	\$ 107,286
Expenses	\$ 362,746	\$ 75,517	\$ 316,469	419.07 %	\$ 71,302
Net Excess/(Deficit)	\$ 1,729	\$ 23,632	\$ 11,629	49.21 %	\$ 35,984
<b>Burnet Economic Development Corporation</b>					
Revenues	\$ 3,071,450	\$ 446,724	\$ 1,026,432	229.77 %	\$ 493,481
Use of Fund Balance	\$ —	\$ —	\$ —	— %	\$ —
Use of Loan Proceeds	\$ 175,000	\$ —	\$ 175,000	175,000.00 %	\$ —
Total Revenue	\$ 3,246,450	\$ 446,724	\$ 1,201,432	268.94 %	\$ 493,481
Expenses	\$ 3,052,080	\$ 478,011	\$ 709,282	148.38 %	\$ 286,429
Net Excess/(Deficit)	\$ 194,370	\$ (31,287)	\$ 492,150	(1,573.02)%	\$ 207,052



# City of Burnet

## Finance Department

Budget		Actual		
Annual Budget	YTD June 2018	YTD June 2018	% of YTD Budget	YTD Apr 2017
<b>Debt Service Fund</b>				
Revenues	\$ 1,130,613	\$ 865,158	\$ 737,783	85.28 % \$ 832,684
Expenses	\$ 1,130,612	\$ 801,327	\$ 799,998	99.83 % \$ 804,974
Net Excess/(Deficit)	\$ —	\$ 63,831	\$ (62,215)	(97.47)% \$ 27,710
<b>Self Funded Equipment Fund</b>				
Revenues	\$ 786,052	\$ —	\$ 643,003	643,003.00 % \$ 557,156
Expenses	\$ 721,300	\$ —	\$ 540,971	540,971.00 % \$ 702,159
Net Excess/(Deficit)	\$ 64,752	\$ —	\$ 102,032	102,032.00 % \$ (145,003)
<b>Interest &amp; Sinking Fund</b>				
Revenues	\$ 345,686	\$ 279,903	\$ 351,835	125.70 % \$ 314,366
Expenses	\$ 345,686	\$ 174,844	\$ 174,855	100.01 % \$ 173,874
Net Excess/(Deficit)	\$ —	\$ 105,059	\$ 176,980	168.46 % \$ 140,492



# City of Burnet

## Finance Department

### Year to Date Actual as of June 2018

Category	General Fund	Electric Fund	Water/Wastewater Fund	Golf	Airport	Total
Ad Velorem Taxes	\$ 2,277,768	\$ —	\$ —	\$ —	\$ —	2,138,336
Sales Tax Revenue	\$ 1,238,179	\$ —	\$ —	\$ —	\$ —	707,901
Other Taxes	\$ 114,315	\$ —	\$ —	\$ —	\$ —	114,315
Allocation Transfer In	\$ 1,938,952	\$ —	\$ —	\$ —	\$ —	1,938,952
Use of Fund Balance	\$ 990,159	\$ 98,866	\$ —	\$ —	\$ —	1,089,025
Fees for Services	\$ 2,110,176	\$ 6,284,243	\$ 3,020,060	\$ 815,933	\$ 442,955	12,673,367
Municipal Court Fines	\$ 222,851	\$ —	\$ —	\$ —	\$ —	222,851
County Coverage	\$ 427,004	\$ —	\$ —	\$ —	\$ —	427,004
Other Revenue	\$ 153,856	\$ 41,823	\$ 50,558	\$ 2,872	\$ 404	249,513
Contributions	\$ 3,388	\$ —	\$ —	\$ —	\$ —	3,388
Interest Earned	\$ 16,523	\$ 1,690	\$ 3,627	\$ —	\$ 4,694	26,534
Sale of Property	\$ 13,629	\$ —	\$ —	\$ —	\$ —	13,629
Penalties	\$ —	\$ 84,237	\$ 39,509	\$ —	\$ —	123,746
Connection Fees	\$ —	\$ 25,674	\$ 22,356	\$ —	\$ —	48,030
Transfers	\$ —	\$ 10,000	\$ —	\$ 91,542	\$ —	101,542
Other Operating Revenue	\$ —	\$ —	\$ —	\$ 1,100	\$ —	1,100
Sale of Merchandise - Pro Shop	\$ —	\$ —	\$ —	\$ 127,001	\$ —	127,001
Sale of Merchandise - Snack Bar	\$ —	\$ —	\$ —	\$ 185,961	\$ —	185,961
Hanger Lease	\$ —	\$ —	\$ —	\$ —	\$ 143,340	143,340
Grant Revenue	\$ 6,696	\$ —	\$ —	\$ —	\$ 28,662	35,358
<b>Total Revenue</b>	<b>\$ 9,513,496</b>	<b>\$ 6,546,533</b>	<b>\$ 3,136,110</b>	<b>\$ 1,224,409</b>	<b>\$ 620,055</b>	<b>20,370,893</b>
Personnel	\$ 4,416,766	\$ 615,116	\$ 764,607	\$ 563,772	\$ 51,247	6,411,508
Supplies	\$ 414,247	\$ 60,642	\$ 136,843	\$ 63,118	\$ 14,067	688,917
Repairs & Maintenance	\$ 323,235	\$ 107,242	\$ 245,810	\$ 73,861	\$ 52,332	802,480
Services	\$ 1,946,759	\$ 97,689	\$ 323,833	\$ 141,414	\$ 73,704	2,583,399
Other Expense	\$ 15,181	\$ —	\$ —	\$ —	\$ —	15,181
Property Acquisition	\$ 770	\$ —	\$ —	\$ —	\$ —	770
Capital Outlay	\$ 39,006	\$ 21,017	\$ 11,809	\$ —	\$ —	71,832
Transfers to Other Funds	\$ 1,090,952	\$ 98,866	\$ —	\$ —	\$ —	1,189,818
Purchases for Resale	\$ —	\$ 3,577,337	\$ 49,136	\$ 196,145	\$ 280,831	4,103,449
Tournaments	\$ —	\$ —	\$ —	\$ 62,519	\$ —	62,519
Community Outreach	\$ —	\$ 67,455	\$ —	\$ —	\$ —	67,455
Transfers to Debt Service	\$ —	\$ 36,415	\$ 681,195	\$ —	\$ 19,706	737,316
Allocation Transfers	\$ —	\$ 1,375,287	\$ 439,937	\$ 91,542	\$ 28,224	1,934,990
<b>Total Expenditures</b>	<b>\$ 8,246,916</b>	<b>\$ 6,057,066</b>	<b>\$ 2,653,170</b>	<b>\$ 1,192,371</b>	<b>\$ 520,111</b>	<b>18,669,634</b>
<b>Net Profit / (Loss)</b>	<b>\$ 1,266,580</b>	<b>\$ 489,467</b>	<b>\$ 482,940</b>	<b>\$ 32,038</b>	<b>\$ 99,944</b>	<b>2,370,969</b>





# City of Burnet

## Finance Department

### General Fund by Department

June 2018

Description	Mayor & Council	Administra- tion	Interfund Transfers	Police	Municipal Court	Fire/EMS	Sanitation	Streets	Parks	Development Services	City Shop	Economic Development	Galloway Hammond	Total
Ad Velorem Taxes	\$ —	\$ 2,277,768	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	2,277,768
Sales Tax Revenue	\$ —	\$ 1,238,179	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	1,238,179
Other Taxes	\$ —	\$ 114,315	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	114,315
Allocation Transfer In	\$ —	\$ 1,938,952	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	1,938,952
Use of Fund Balance	\$ —	\$ 990,159	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	990,159
Fees for Services	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 1,350,636	\$ 712,967	\$ —	\$ 31,390	\$ 15,183	\$ —	\$ —	\$ —	2,110,176
Municipal Court Fines	\$ —	\$ —	\$ —	\$ —	\$ 87,681	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	87,681
County Coverage	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 427,004	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	427,004
Other Revenue	\$ —	\$ 6,434	\$ —	\$ 135,170	\$ —	\$ 4,081	\$ —	\$ —	\$ 35,000	\$ 47,591	\$ —	\$ 60,750	\$ —	289,026
Contributions	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 3,388	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	3,388
Sale of Property	\$ —	\$ 13,629	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	13,629
Grant Revenue	\$ —	\$ —	\$ —	\$ 6,696	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	6,696
Interest Earned	\$ —	\$ 16,523	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	16,523
<b>Total Revenue</b>	<b>\$ —</b>	<b>\$ 6,595,959</b>	<b>\$ —</b>	<b>\$ 141,866</b>	<b>\$ 87,681</b>	<b>\$ 1,785,109</b>	<b>\$ 712,967</b>	<b>\$ —</b>	<b>\$ 66,390</b>	<b>\$ 62,774</b>	<b>\$ —</b>	<b>\$ 60,750</b>	<b>\$ —</b>	<b>9,513,496</b>
Personnel	\$ 345	\$ 542,366	\$ —	\$ 1,120,342	\$ 24,924	\$ 1,834,837	\$ —	\$ 306,035	\$ 296,505	\$ 195,931	\$ 52,243	\$ 43,238	\$ —	4,416,766
Supplies	\$ 2,993	\$ 61,346	\$ —	\$ 108,477	\$ 2,433	\$ 141,988	\$ 13,907	\$ 30,578	\$ 29,159	\$ 7,945	\$ 15,109	\$ 312	\$ —	414,247
Repairs & Maintenance	\$ 694	\$ 81,764	\$ —	\$ 35,336	\$ 5,093	\$ 67,778	\$ —	\$ 52,661	\$ 61,951	\$ 4,420	\$ 6,910	\$ —	\$ 6,628	323,235
Services	\$ 10,224	\$ 414,392	\$ —	\$ 208,669	\$ 19,287	\$ 373,475	\$ 574,231	\$ 75,170	\$ 110,178	\$ 78,416	\$ 4,233	\$ 3,484	\$ 75,000	1,946,759
Other Expense	\$ 13,631	\$ —	\$ —	\$ 1,550	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	15,181
Property Acquisition	\$ 770	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	770
Capital Outlay	\$ —	\$ 14,258	\$ —	\$ 24,748	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	39,006
Transfers to Other Funds	\$ —	\$ —	\$ 1,090,952	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	1,090,952
Transfers to Debt Service	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	—
<b>Total Expenditures</b>	<b>\$ 28,657</b>	<b>\$ 1,114,126</b>	<b>\$ 1,090,952</b>	<b>\$ 1,499,122</b>	<b>\$ 51,737</b>	<b>\$ 2,418,078</b>	<b>\$ 588,138</b>	<b>\$ 464,444</b>	<b>\$ 497,793</b>	<b>\$ 286,712</b>	<b>\$ 78,495</b>	<b>\$ 47,034</b>	<b>\$ 81,628</b>	<b>8,246,916</b>
Excess / (Deficit)	(28,657)	5,481,833	(1,090,952)	(1,357,256)	35,944	(632,969)	124,829	(464,444)	(431,403)	(223,938)	(78,495)	13,716	(81,628)	1,266,580



## Electric Fund

Category	FY 2017-2018 Annual Budget	Budget May 2018	June 2018	% of Annual Budget	June 2017
Electric Sales	\$ 8,384,000	\$ 5,767,874	\$ 6,284,243	74.96%	\$ 5,830,770
Cost of Power	\$ 4,716,000	\$ 3,303,077	\$ 3,577,337	75.86%	\$ 3,299,096
Net Sales	\$ 3,668,000	\$ 2,464,797	\$ 2,706,906	73.80%	\$ 2,531,674
Other Revenue	\$ 177,200	\$ 125,035	\$ 167,766	94.68%	\$ 140,259
Use of Fund Balance	\$ 125,000	\$ 74,643	\$ 98,866	79.09%	\$ 110,579
<b>Revenue Net of Cost of Power</b>	<b>\$ 3,970,200</b>	<b>\$ 2,664,475</b>	<b>\$ 2,973,538</b>	<b>74.90%</b>	<b>\$ 2,782,512</b>
Personnel	\$ 855,499	\$ 656,203	\$ 615,116	71.90%	\$ 529,407
Supplies	\$ 80,000	\$ 62,026	\$ 60,642	75.80%	\$ 68,927
Repairs & Maintenance	\$ 193,000	\$ 126,488	\$ 107,242	55.57%	\$ 84,600
Services	\$ 148,494	\$ 118,841	\$ 97,689	65.79%	\$ 174,924
Community Outreach	\$ 85,200	\$ 69,202	\$ 67,455	79.17%	\$ 73,964
Capital Outlay	\$ 80,000	\$ 62,222	\$ 21,017	26.27%	\$ 118,378
Transfer to Capital Project Fund	\$ 125,000	\$ 74,643	\$ 98,866	79.09%	\$ 110,579
Transfers to Debt Service	\$ 48,554	\$ 36,415	\$ 36,415	75.00%	\$ 50,477
Allocation Transfers	\$ 1,891,463	\$ 1,311,751	\$ 1,375,287	72.71%	\$ 1,272,251
<b>Expenditures</b>	<b>\$ 3,507,210</b>	<b>\$ 2,517,791</b>	<b>\$ 2,479,729</b>	<b>70.70%</b>	<b>\$ 2,483,507</b>
<b>Net Profit / (Loss)</b>	<b>\$ 462,990</b>	<b>\$ 146,684</b>	<b>\$ 493,809</b>	<b>106.66%</b>	<b>\$ 299,005</b>
<b>kWh Sold</b>			<b>57,668,525</b>		<b>53,078,723</b>



## Water/Wastewater Fund

Category	FY 2017-2018 Annual Budget	Budget May 2018	June 2018	% of Annual Budget	June 2017
Water Sales	\$ 2,215,000	\$ 1,567,757	\$ 1,652,297	74.60%	\$ 1,580,573
Purchases for Resale	\$ 70,000	\$ 47,050	\$ 49,136	70.19%	\$ 36,939
Net Sales	\$ 2,145,000	\$ 1,520,707	\$ 1,603,161	74.74%	\$ 1,543,634
Wastewater Revenue	\$ 1,760,000	\$ 1,315,627	\$ 1,367,763	77.71%	\$ 1,337,919
Other Revenue	\$ 101,700	\$ 43,243	\$ 116,050	114.11%	\$ 65,007
Use of Fund Balance	\$ 500,000	\$ 361,449	\$ —	—%	\$ 67,339
<b>Revenue Net of Cost of Water</b>	<b>\$ 4,506,700</b>	<b>\$ 3,241,026</b>	<b>\$ 3,086,974</b>	<b>68.50%</b>	<b>\$ 3,013,899</b>
Personnel	\$ 1,012,610	\$ 775,138	\$ 764,607	50.19%	\$ 721,470
Supplies	\$ 192,500	\$ 131,301	\$ 136,843	47.00%	\$ 117,830
Repairs & Maintenance	\$ 336,500	\$ 226,264	\$ 245,810	49.97%	\$ 223,717
Services	\$ 454,730	\$ 332,812	\$ 323,833	50.07%	\$ 276,875
Capital Outlay	\$ —	\$ —	\$ 11,809	100.00%	\$ 1,572
Transfer to Capital Project Fund	\$ 500,000	\$ 375,000	\$ —	—%	\$ 67,339
Allocation Transfers	\$ 582,338	\$ 424,962	\$ 439,937	48.99%	\$ 434,141
Transfers to Debt Service	\$ 1,055,035	\$ 791,501	\$ 681,195	43.04%	\$ 764,941
<b>Expenditures</b>	<b>\$ 4,133,713</b>	<b>\$ 3,056,978</b>	<b>\$ 2,604,034</b>	<b>63.00%</b>	<b>\$ 2,607,885</b>
<b>Net Profit / (Loss)</b>	<b>\$ 372,987</b>	<b>\$ 184,048</b>	<b>\$ 482,940</b>	<b>129.48%</b>	<b>\$ 406,014</b>
Surface Water			140,799,000		112,533,000
Ground Water			85,699,000		101,242,000
<b>Total Gallons Produced</b>			<b>226,498,000</b>		<b>213,775,000</b>





## Delaware Springs Golf Course

Category	FY 2017-2018 Annual Budget	Budget May 2018	June 2018	% of Annual Budget	June 2017
Charges For Golf Services	\$ 922,000	\$ 690,645	\$ 815,933	88.50%	\$ 716,831
Other Operating Revenue	\$ —	\$ —	\$ 1,100	100.00%	\$ 700
Other Revenue	\$ —	\$ —	\$ 2,872	100.00%	\$ (19)
Pro Shop	\$ 170,000	\$ 124,196	\$ 127,001	74.71%	\$ 141,933
Snack Bar	\$ 223,000	\$ 152,386	\$ 185,961	83.39%	\$ 158,091
Transfer from General Fund - Overhead	\$ 120,748	\$ 90,961	\$ 91,542	75.81%	\$ 89,823
Transfer from General Fund - Operations	\$ 155,208	\$ 135,875	\$ —	—%	\$ 50,857
Revenue	\$ 1,590,956	\$ 1,194,063	\$ 1,224,409	76.96%	\$ 1,158,216
Personnel	\$ 779,447	\$ 600,803	\$ 563,772	72.33%	\$ 574,734
Supplies	\$ 83,200	\$ 61,383	\$ 63,118	75.86%	\$ 64,584
Repairs & Maintenance	\$ 125,450	\$ 80,867	\$ 73,861	58.88%	\$ 77,069
Services	\$ 184,700	\$ 136,666	\$ 141,414	76.56%	\$ 126,538
Purchases for Resale	\$ 252,410	\$ 181,295	\$ 196,145	77.71%	\$ 195,755
Tournaments	\$ 45,000	\$ 21,912	\$ 62,519	138.93%	\$ 29,713
Allocation Transfers	\$ 120,748	\$ 90,961	\$ 91,542	75.81%	\$ 89,823
Expenditures	\$ 1,590,956	\$ 1,173,887	\$ 1,192,371	74.95%	\$ 1,158,216
Net Profit / (Loss)	\$ —	\$ 20,176	\$ 32,038	100.00%	\$ —

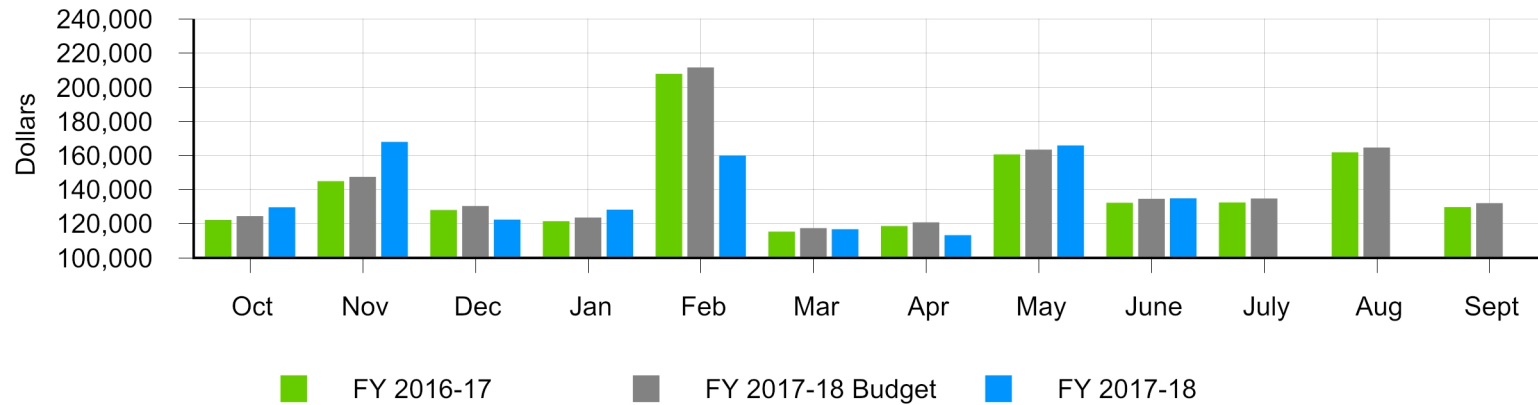


## Airport Fund

Category	FY 2017-2018 Annual Budget	Budget May 2018	June 2018	% of Annual Budget	June 2017
Fuel Sales	\$ 555,000	\$ 416,826	\$ 442,955	79.81%	\$ 428,789
Purchases for Resale	\$ 349,180	\$ 254,720	\$ 280,831	80.43%	\$ 264,532
Net Sales	\$ 205,820	\$ 162,106	\$ 162,124	78.77%	\$ 164,257
Other Revenue	\$ 1,900	\$ 741	\$ 404	11.00%	\$ 2,230
Hanger Lease	\$ 203,600	\$ 145,556	\$ 143,340	46.29%	\$ 145,798
Interest Earned	\$ 550	\$ 94	\$ 4,694	371.27%	\$ 287
Grant Revenue	\$ 30,000	\$ 30,000	\$ 28,662	95.54%	\$ 7,349
Use Of Fund Balance	\$ —	\$ —	\$ 45,814	100.00%	\$ —
<b>Revenue Net of Fuel Purchases</b>	<b>\$ 441,870</b>	<b>\$ 338,497</b>	<b>\$ 385,038</b>	<b>87.14%</b>	<b>\$ 319,921</b>
Personnel	\$ 93,850	\$ 75,592	\$ 51,247	35.08%	\$ 46,230
Supplies	\$ 23,250	\$ 17,342	\$ 14,067	32.63%	\$ 17,560
Repairs & Maintenance	\$ 63,000	\$ 31,080	\$ 52,332	37.13%	\$ 29,477
Services	\$ 102,950	\$ 77,415	\$ 73,704	46.68%	\$ 73,731
Transfers to Debt Service	\$ 26,275	\$ 19,706	\$ 19,706	50.00%	\$ 16,721
Allocation Transfers	\$ 36,853	\$ 29,784	\$ 28,224	49.58%	\$ 23,342
Transfers	\$ —	\$ —	\$ 45,814	100.00%	\$ —
Expenditures	\$ 346,178	\$ 250,919	\$ 285,094	82.35%	\$ 207,061
Net Profit / (Loss)	\$ 95,692	\$ 87,578	\$ 99,944	104.44%	\$ 112,860
AvGas			44,968		44,322
Jet			64,249		76,820
Total Gallons Sold			109,217		121,142

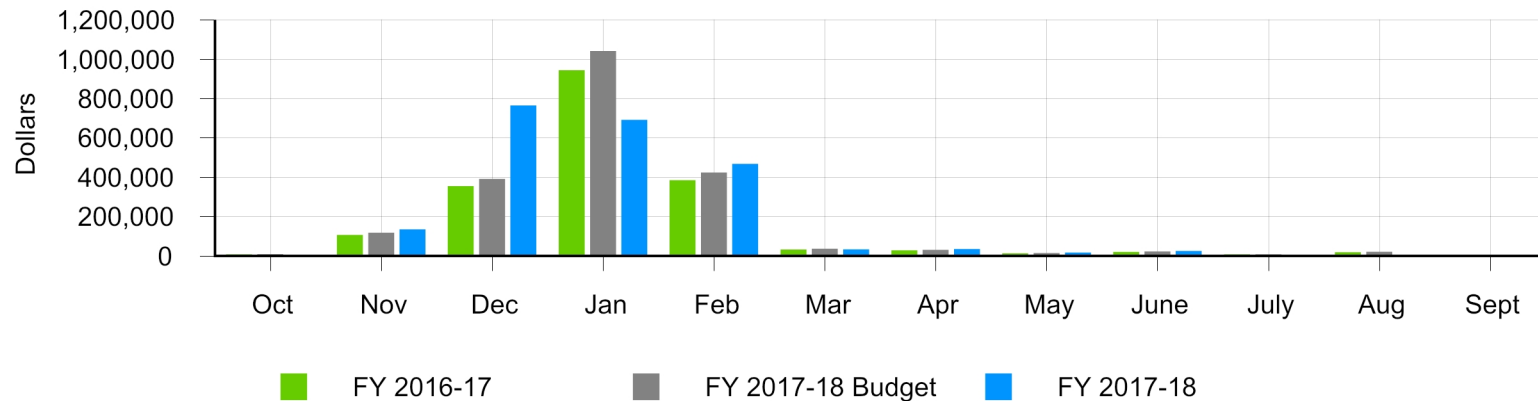


### Sales Tax Revenue



Sales Tax collected by the state is remitted to the City two months later. Therefore, the spike in Sales Tax Revenue shown in February reflects the tax collected in December.

### Property Tax Revenue

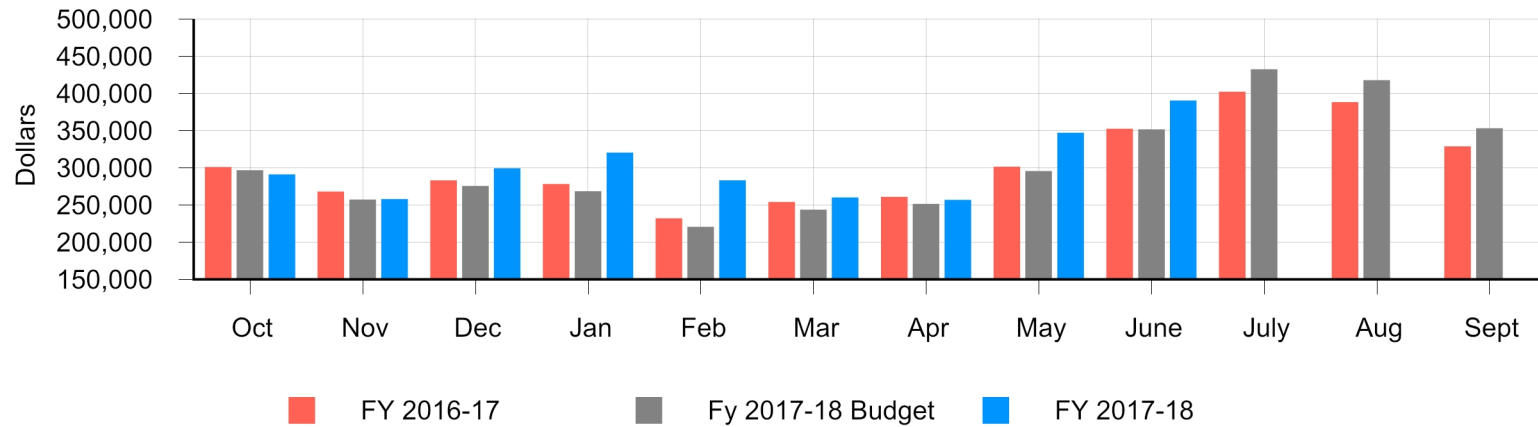


Property Taxes are collected by the Central Appraisal District and remitted to the City. Fluctuations in monthly numbers are the result of when the taxes are paid.

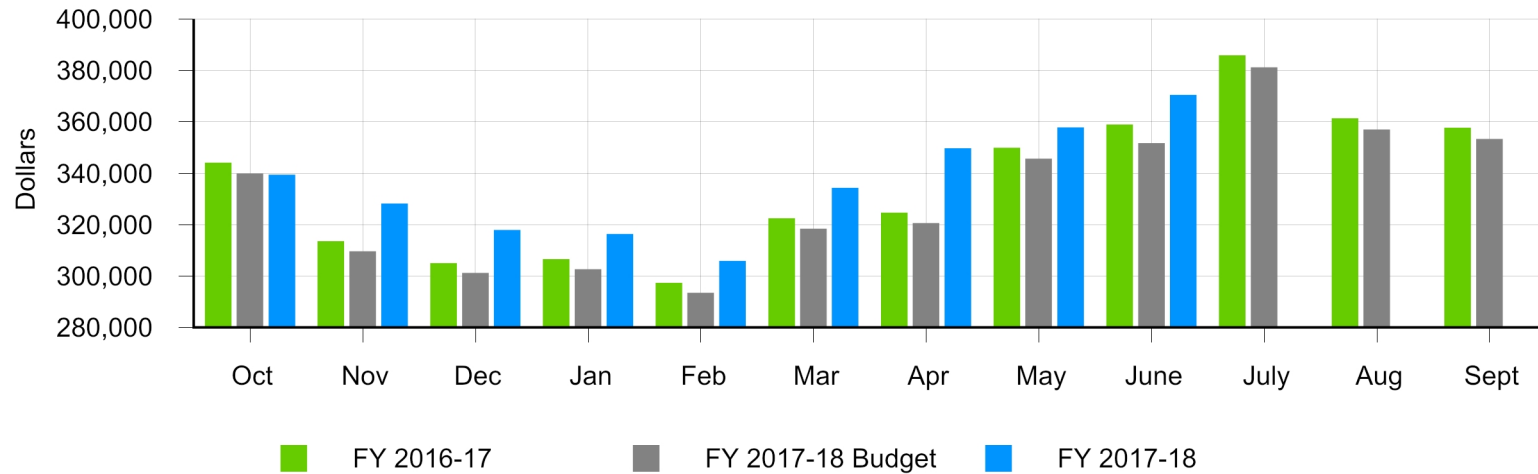




### Electric Sales Net Revenue



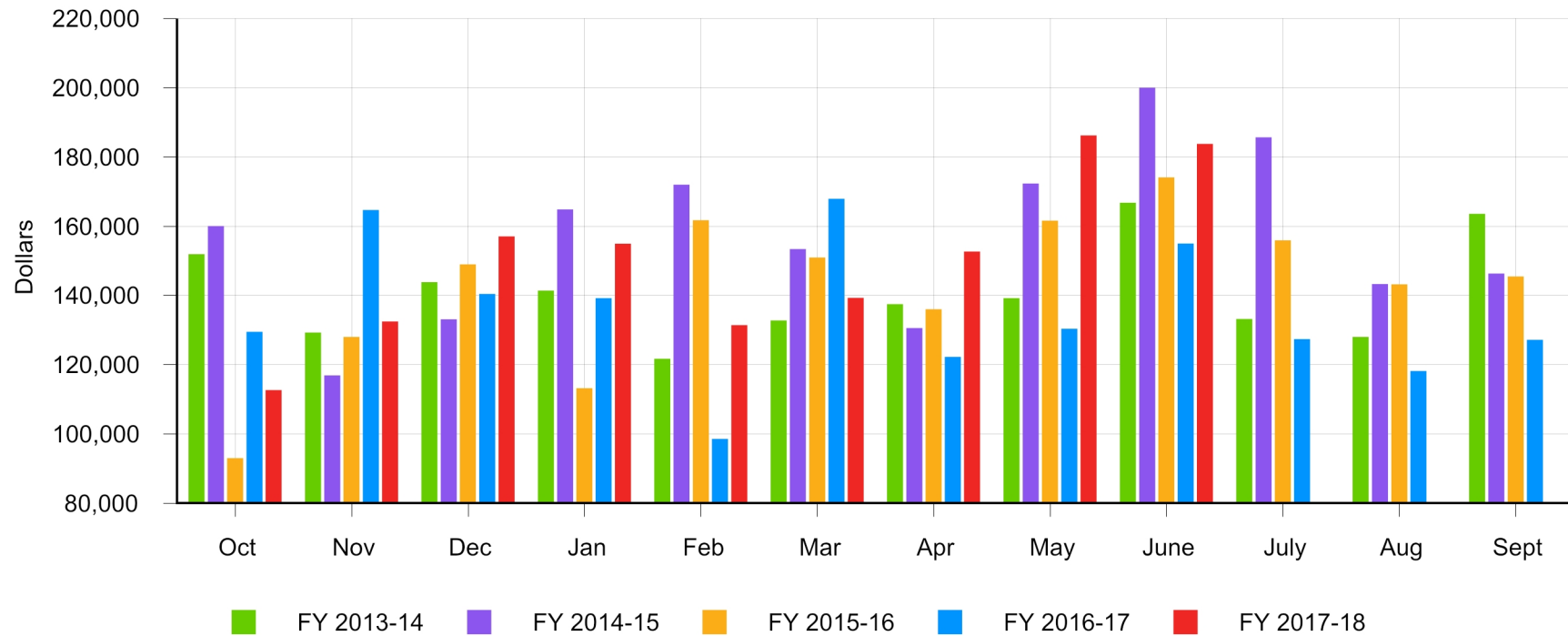
### Water / Wastewater Sales Revenue



Utility revenue from month to month can be very volatile depending on weather and consumption patterns.



## EMS Patient Billing Collections

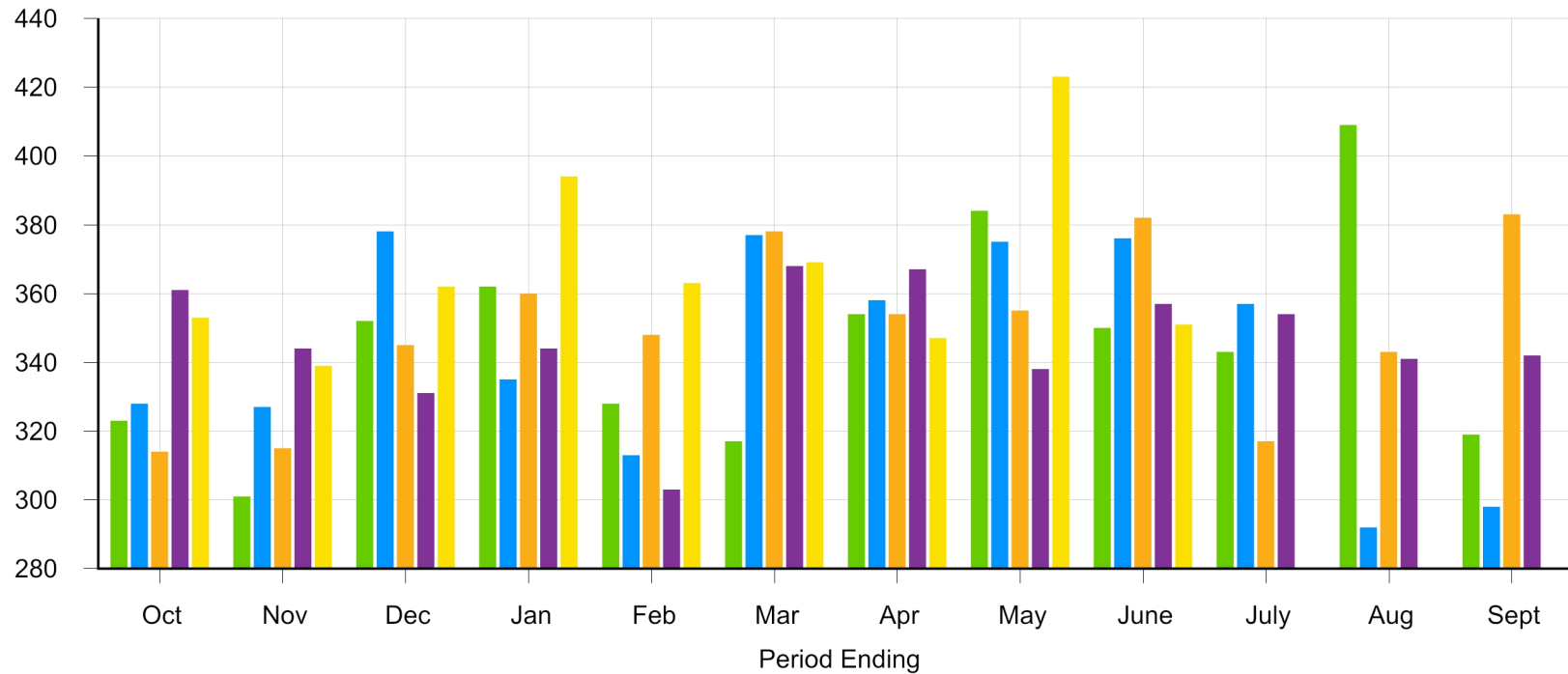


	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total
FY 2013-14	\$151,962.82	\$129,263.98	\$143,843.54	\$141,387.97	\$121,652.84	\$132,770.94	\$137,460.44	\$139,256.56	\$166,800.56	\$133,167.80	\$127,998.41	\$163,576.21	\$1,689,142.07
FY 2014-15	\$160,062.21	\$116,890.14	\$133,098.44	\$164,846.42	\$172,025.94	\$153,381.45	\$130,582.82	\$172,361.34	\$200,075.77	\$185,666.65	\$143,267.10	\$146,297.84	\$1,878,556.12
FY 2015-16	\$ 93,006.55	\$127,968.30	\$149,001.74	\$113,172.73	\$161,756.31	\$150,980.36	\$135,994.20	\$161,624.69	\$174,077.52	\$155,931.11	\$143,193.09	\$145,449.14	\$1,712,155.74
FY 2016-17	\$129,477.14	\$164,728.83	\$140,445.15	\$139,240.23	\$ 98,537.83	\$167,924.75	\$122,251.53	\$130,355.06	\$154,984.24	\$127,354.64	\$118,199.90	\$127,170.36	\$1,620,669.66
FY 2017-18	\$112,652.61	\$132,518.13	\$157,064.44	\$154,948.23	\$131,404.83	\$139,279.39	\$152,692.26	\$186,266.41	\$183,809.71				\$1,350,636.01

EMS patient billing collections are the reflection of the number of ambulance runs, the type of insurance the patient may have, uninsured patients and changes to insurance rules. The result can be a significant fluctuation from month to month and year to year.



## EMS Call Volume



■ FY 2013-14 
 ■ FY 2014-15 
 ■ FY 2015-16 
 ■ FY 2016-17 
 ■ FY 2017-18

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total
FY 2013-14	323	301	352	362	328	317	354	384	350	343	409	319	4,142
FY 2014-15	328	327	378	335	313	377	358	375	376	357	292	298	4,114
FY 2015-16	314	315	345	360	348	378	354	355	382	317	343	383	4,194
FY 2016-17	361	344	331	344	303	368	367	338	357	354	341	342	4,150
FY 2017-18	353	339	362	394	363	369	347	423	351				3,301