

AIA[®] Document A102[™] – 2017

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

AGREEMENT made as of the Tenth day of March in the year 2022.
(In words, indicate day, month and year.)

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

Tarrant County Hospital District d/b/a JPS Health Network
1500 S. Main Street
Fort Worth, Texas 76104
Telephone Number: 817-702-4932
Fax Number: 817-702-4940

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

The Whiting-Turner Contracting Company
301 South Henderson
Fort Worth, Texas 76104
817-725-7700

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

Space Consolidation - GNO
1500 S. Main St.
Fort Worth, Texas 76104

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

Corgan
401 North Houston Street
Dallas, Texas 75202
214-748-2000

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

The parties should complete A102[™]-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201[™]-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration 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 and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

☐ [« »] The date of this Agreement.

☐ [« »] A date set forth in a notice to proceed issued by the Owner.

☒ [X] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

Forty-one (41) days from the date the Agreement is fully executed. (required mobilization).

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

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

§ 4.3 Substantial Completion

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

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

☒ Not later than 110 calendar days from the date of commencement of the Work.

☐ By the following date: << >>

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

Left Blank Intentionally.

Portion of Work

Substantial Completion Date

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

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

\$46,777.00

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

None

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

None

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed Five percent (5 %) of the standard rental rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item

Units and Limitations

Price Per Unit (\$0.00)

n/a

§ 5.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The Contractor will pay Owner upon demand from Owner liquidated damages in the sum of Five Hundred Dollars and Zero Cents (\$500.00) for each calendar day, if any, during the period of time commencing on the agreed Date of Substantial Completion and ending on the date of Substantial Completion of Work.

§ 5.1.7 Other:

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

n/a

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Six Hundred Ninety-Eight Thousand Four Hundred Eighty-Two dollars and NO cents (\$ 698,482.00), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.2 Alternates

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
n/a	

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

Item	Price	Conditions for Acceptance
n/a		

§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
Owner Controlled Contingency	\$80,000.00

§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:

NONE

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™-2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as they refer to "cost" and "fee," and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Contractor’s Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor’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 Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor’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, **provided however, for the purposes of Section 6.3 and this Section 6.4 as it relates to properly approved Change Orders which result in an increase in the Cost of the Work, the Contractor’s Fee for the additional Work in such Change Order shall be ten percent (10%) of the Cost of the Work included in such Change Orders.**

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7, **but only to the extent reasonably and necessarily incurred by the Contractor in the proper performance of the Work.**

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Contractor’s supervisory and administrative personnel when stationed at the site and performing Work, with the Owner’s prior approval.

§ 7.2.2.1 Wages or salaries of the Contractor’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

1- Lead Project Manager:

Dusty Roberts

Mobile: 682-206-8150

Email: dusty.roberts@whiting-turner.com

2- Superintendent:

Luke Wilson

Mobile: 817-733-8364

Email: luke.wilson@whiting-turner.com

§ 7.2.3 Wages or salaries of the Contractor’s supervisory or administrative personnel engaged at factories, workshops or while traveling, 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.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining 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 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 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 Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor 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 Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

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

§ 7.6 Miscellaneous Costs

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

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

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

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

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor 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.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 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 Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific obligation or responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others, or (ii) a cause of action does not exist for the recovery by the Contractor for the cost of repair or correction from Contractor's Subcontractors or suppliers or anyone directly or indirectly employed by any of them.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor 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 in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including but not limited to interest on or loss of use of the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contractor by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Omitted intentionally.

§ 9.2 Omitted intentionally.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (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 Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 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 Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor 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 Contractor in Article 11.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor 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 Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating

to this Contract. The Contractor 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 12 PAYMENTS

§ 12.1 Progress Payments

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

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

Left blank intentionally.

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the **fifth (5th)** day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the **twenty-first (21st)** day of the **next** month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than **thirty (30)** days after the Architect receives the Application for Payment.

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

§ 12.1.4 With each Application for Payment, in addition to what is otherwise required by the Contract Documents, the Contractor 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 payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.

§ 12.1.6 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 Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make 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.

§ 12.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

- .1 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 most recent schedule of values;
- .2 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 completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor'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 included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

§ 12.1.8 Retainage

§ 12.1.8.1 For each progress payment made prior to final payment as provided in Section 12.2, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten percent (10%) of the payment otherwise due

§ 12.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

n/a

§ 12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

n/a

§ 12.1.8.3 Left blank intentionally.

§ 12.1.9 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 12.1.10 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 12.1.11 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.12 In taking action on the Contractor's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor 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.

§ 12.2 Final Payment

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor 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 in accordance with Section 12.2.2.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 12.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor'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 Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

Left blank intentionally.

§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor'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 adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

§ 12.3 Interest

Payments due and unpaid under the Contract shall comply with Texas Government Code Section 2251.022, and, as provided in Texas Government Code Section 2251.025, shall bear interest from the thirty-first (31st) day after the

payment is required to be paid under the terms of this Agreement at the rate stated below, or in the absence thereof, at the legal rate stated in AIA Form A201-2017.

(Insert rate of interest agreed upon, if any.)

A payment is overdue on the 31st day after the payment is required to be paid under the terms of this Agreement. The per annum interest rate for overdue payments under this Agreement shall be the lesser of: (i) the rate of interest for overdue amounts set forth in Texas Government Code Section 2251.025, which is currently the one percent plus the per annum "prime rate" as published in the Wall Street Journal on the first day of July of the preceding fiscal year of Owner that does not fall on a Saturday or Sunday, or (ii) the maximum rate of interest permitted by Texas Law or applicable Federal Law. In no event shall interest contracted for, charged, or received under this Agreement (plus any other charges in connection herewith which constitute interest) exceed the maximum interest permitted by applicable Texas or Federal law. The amounts of such interest or other charges previously paid to the Contractor in excess of the amounts permitted by applicable law, if any, shall be refunded to Owner.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to the Agreement, to serve as 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.)

Left blank intentionally.

§ 13.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ [« »] Arbitration pursuant to Section 15 of AIA Document A201-2017

☒ [X] Litigation in a court of competent jurisdiction

☐ [« »] Other *(Specify)*

« »

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

§ 14.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

§ 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201-2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor'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;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017.

§ 14.1.2.2 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.1.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

None

§ 14.2 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 The Owner's representative:

(Name, address, email address and other information)

Tarrant County Hospital District d/b/a JPS Health Network
Attn: Zach Miller
1500 S. Main Street
Fort Worth, Texas 76104
817-733-8364
zmiller@jpshealth.org

§ 15.3 The Contractor's representative:

(Name, address, email address and other information)

The Whiting-Turner Contracting Company
301 South Henderson
Fort Worth, Texas 76104
817-725-7700

§ 15.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 15.5.2 The Contractor shall provide bonds as set forth in AIA Document A102™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 15.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

All notices, requests, demands, and other communications required, provided for, and permitted by this Agreement shall be made in writing either (a) by actual delivery (e.g., personally, by commercial courier service, or by confirmed telefacsimile) of the notice, or (b) by the mailing of the notice by United States Postal Service certified or registered mail, return receipt requested, and addressed to the party to be notified at the address set forth on page 1 of this Agreement (or at such other address as may be given by notice by a party). The notice shall be deemed to be received (i) if by actual delivery, on the date of its receipt by the party, or (ii) if by mail, on the second day on which mail is delivered following the date of deposit in the United States Postal Service.

§ 15.7 Other provisions: Minimum Standards

Any minimum requirements or standards of work included in Contractor's response to Owner's Request for Proposals ("RFP") Number 19-1011 (including any addenda to such RFP) are hereby incorporated into the Contract Documents. To the extent that Owner included minimum requirements or standards of work in RFP Number 19-1011 that were not directly addressed in Contractor's response to the same, Owner's requirements and standards are hereby incorporated into the Contract Documents by reference.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A102™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as set forth in that certain AIA Document A201™–2017, as modified by Owner and delivered herewith by Contractor to Owner ("Modified Document A201"), which supersedes and replaces the standard form of AIA Document A201™–2017, and all references to "AIA Document A201™–2017" shall mean and refer to the Modified Document A201
- .4 Portions of Contractor's Response to Owner's RFP Number 19-1011, which is dated November 18, 2021 (Attached are 44 of the original 68 pages).
- .5 Drawings— Due to length, a copy of all Drawings is not attached hereto, but the following Index describes the Drawings. Owner and Contractor each acknowledge having a copy of all Drawings.

SHEET NO.	SHEET NAME	08.06.2021 ISSUE FOR CONSTRUCTION
01 - GENERAL		
G00-00	COVER SHEET/LIFE SAFETY	■
G00-20	ACCESSIBILITY STANDARDS	■
03 - STRUCTURAL		
S01-01	STRUCTURAL SPECS AND DETAILS	■
08 - ARCHITECTURE		
A02-01	DEMO PLAN, FLOOR PLAN, DOORS & ELEVATIONS	■
A02-02	DIMENSIONED FLOOR PLAN AND RCP	■
09 - INTERIORS		
A09-01	FLOOR PLAN - FINISH PLAN	■
12 - PLUMBING		
P00-01	PLUMBING SYMBOL LEGEND AND GENERAL NOTES	■
P00-02	PLUMBING SPECIFICATIONS	■
P01-01	PLUMBING DEMO FLOOR PLAN	■
P02-02	PLUMBING FLOOR PLAN	■
P03-01	PLUMBING DETAILS & SCHEDULES	■
P04-01	PLUMBING RISERS	■
14 - MECHANICAL		
M00-01	MECHANICAL SYMBOL LEGEND	■
M00-02	MECHANICAL GENERAL NOTES AND ABBREVIATIONS	■
M00-03	MECHANICAL SPECIFICATIONS	■
M01-01	MECHANICAL DEMO FLOOR PLAN	■
M01-02	MECHANICAL DEMO PIPING PLAN	■
M02-01	MECHANICAL FLOOR PLAN	■
M03-01	MECHANICAL PIPING PLAN	■
M04-01	MECHANICAL DETAILS & SCHEDULES	■
15 - ELECTRICAL		
E00-01	ELECTRICAL LEGEND	■
E00-02	ELECTRICAL GENERAL NOTES	■
E00-03	ELECTRICAL SPECIFICATIONS	■
E01-01	ELECTRICAL DEMO PLAN	■
E02-01	POWER PLAN	■
E03-01	LIGHTING PLAN	■
E04-01	PANEL SCHEDULE & DETAILS	■
16 - FIRE PROTECTION		

- .6 Specifications contained in Architect's Project Manual dated August 6, 2021 (consisting of 321 pages). Due to length of the Project Manual, a copy is not attached hereto, but Owner and Contractor each acknowledge having a copy.

In the event of a conflict between the provisions of this AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor and any of the other enumerated documents attached hereto or referenced herein, the provisions of this AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor shall control.

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

**Tarrant County Hospital District d/b/a JPS
Health Network**

The Whiting-Turner Contracting Company

By:

OWNER (Signature)

Karen Duncan
President & Chief Executive Officer

CONTRACTOR (Signature)

Daryl Steinbeck
Senior Vice President

AIA[®] Document A102[™] – 2017

Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the Tenth day of March in the year 2022.
(In words, indicate day, month and year.)

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

Space Consolidation - GNO
1500 S. Main Street
Fort Worth, Texas 76104

THE OWNER:
(Name, legal status and address)

Tarrant County Hospital District d/b/a JPS Health Network
1500 S. Main Street
Fort Worth, Texas 76104
Telephone Number: 817-702-4932
Fax Number: 817-702-4940

THE CONTRACTOR:
(Name, legal status and address)

The Whiting-Turner Contracting Company
301 South Henderson
Fort Worth, Texas 76104
Telephone Number: 817-725-7700

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

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

This document is intended to be used in conjunction with AIA Document A201[™]-2017, General Conditions of the Contract for Construction. Article 11 of A201[™]-2017 contains additional insurance provisions.

TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE A.1 GENERAL

The Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201[™]-2017 (as modified by Owner in the Agreement), General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Omitted Intentionally.

§ A.2.2 Liability Insurance

The Owner is a political subdivision of the State of Texas, subject to the Texas Tort Claims Act (Tex. Civil Practice & Remedies Code Chapter 101), under which liability of Owner for tort claims is limited as provided in the Texas Tort Claims Act. The Owner is

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responsible for purchasing and maintaining or otherwise providing only such liability insurance, as Owner, in its sole discretion, may choose to purchase or provide. Owner may, in its sole discretion, self-insure as to all or any portion thereof.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Whether or not the obligation to purchase builder's risk insurance for the Project is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner may, in its sole discretion, but shall have no obligation to, purchase and maintain from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, or provide by self-insurance, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient determined reasonable by Owner, in its sole discretion, to cover the Project. The Owner's property insurance coverage shall be in such amounts determined by Owner in its sole discretion.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, such coverages in such amounts as Owner may elect in its sole discretion.

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations (and a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 60 days' prior written notice has been given to the Owner), shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project (including Premises Operations, Independent Contractors and Completed Operations/Products), written on an occurrence form with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) each occurrence for bodily injury, Five Hundred Thousand Dollars (\$500,000) general aggregate for bodily injury, and One Hundred Thousand Dollars (\$100,000) aggregate for products-completed operations hazard, providing coverage for claims including:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

Property Damage Liability Insurance shall provide Broad Form Property Damage Liability coverage and XCU (Explosion, Collapse and Underground Property Damage Liability) coverage as applicable.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than Two Hundred Fifty Thousand Dollars (\$250,000) per person, Five Hundred Thousand Dollars (\$500,000) per accident, for bodily injury, death of any person, and not less than One Hundred Thousand Dollars (\$100,000) property damage per occurrence arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required

under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.4.1 The Contractor shall NOT include any of the following insurance coverages under or in connection with the Contractor's base proposal or base Contract Sum; however the Contractor shall provide the respective additional cost for each of the following amounts of coverage for the liability insurance under Section A.3.2.2 as alternates in the bid proposal for the Owner's review and consideration:

- a. \$1,000,000 Each Occurrence Bodily Injury/Property Damage Combined
\$1,000,000 Aggregate Bodily Injury/Property Damage Combined
- b. \$3,000,000 Each Occurrence Bodily Injury/Property Damage Combined
\$3,000,000 Aggregate Bodily Injury/Property Damage Combined
- c. \$5,000,000 Each Occurrence Bodily Injury/Property Damage Combined
\$5,000,000 Aggregate Bodily Injury/Property Damage Combined

§ A.3.2.4.2 In the event Owner elects to require any of the alternate coverage amounts set forth in any of Sections A.3.2.4.1 a, b or c above, such coverage in such amounts shall be provided and maintained by the Contractor from the award of the Contract until after the Final Completion at the additional cost submitted by Contractor with its alternative proposal.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than One Hundred Thousand Dollars (\$100,000) each accident, One Hundred Thousand Dollars (\$100,000) each employee, and Five Hundred Thousand Dollars (\$500,000) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than Five Hundred Thousand Dollars (\$500,000) per claim and Seven Hundred Fifty Thousand Dollars (\$750,000) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Five Hundred Thousand Dollars (\$500,000) per claim and Seven Hundred Fifty Thousand Dollars (\$750,000) in the aggregate.

§ A.3.2.11 Left blank intentionally.

§ A.3.2.12 Left blank intentionally.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

n/a

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[☒] **§ A.3.3.2.1** Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. Such builder's risk property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions.

[☐] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall furnish, and maintain in full force and effect until after Final Completion, bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Such bonds shall be provided by a commercial surety in duration, form and substance which comply, in all respects, with the provisions of the McGregor Act and may be obtained through the Contractor's usual source. All cost and expense required to procure and maintain such bonds shall be included in the Contract Sum. The amount of the surety's obligation on such payment and performance bonds shall be equal to 100 percent of the Contract Sum.

- .1 The Contractor shall deliver the required bonds to the Owner in the required amounts, form and substance not later than three (3) days following the date the Contract has been signed by both Contractor and Owner; provided, however if the Work is to be commenced prior three (3) days following the date the Contract is executed in response or pursuant to a letter of intent or some other form of agreement and instructions of Owner to proceed, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished in compliance with the provisions of this Section 11.5.
- .2 All bonds provided pursuant to this Section 11.5 shall be executed by the attorney-in-fact on behalf of the surety and a certified and current copy of the power of attorney appointing such attorney-in-fact shall be affixed thereto. All payment and performance bonds shall be issued by a commercial surety company having a rating of by A.M. Best Company, Inc. of A VIII or better in Best's Key Rating Guide.
- .3 The surety on any payment or performance bond provided pursuant to this Section 11.5 shall be deemed insolvent for the purposes of this Section 11.5 upon the occurrence of any one or more of the following events: (1) such surety becomes insolvent (as defined by Sec. 24.003 of Chapter 24 of the Texas Business and Commerce Code), (2) an order for relief is entered for or against such surety under any chapter of the United Bankruptcy Code, as hereafter amended, (3) such surety voluntarily or involuntarily makes an assignment for the benefit of creditors, and/or (4) a conservator, receiver or similar fiduciary is appointed over all or substantially all of such surety's assets. In the event the surety on any bond provided by Contractor under the Agreement becomes insolvent during the term of the Agreement, at the Owner's request the Contractor shall immediately exercise every best

commercial effort to replace the bond of the insolvent or bankrupt surety with the bond of another surety meeting the requirements of this Section 11.5 covering the balance of the Work in order to assure completion of the Project in a statutorily acceptable bonded condition. The Owner agrees to reimburse Contractor for the direct cost of any reasonable and standard bond premium associated with acquiring any such new surety bond.

§ A.3.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ A.3.4.2 Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, or other form reasonably acceptable to the Owner, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Failure on the part of Contractor to procure and continuously maintain in effect any one or more of the insurance policies and coverages required by this Exhibit or in Section 11 of the General Terms and Conditions shall constitute a material breach of this Agreement. In addition to the remedies provided in the Agreement for material breach, and without limiting same, in the event of a material breach regarding insurance coverage and/or amounts, the Owner may, but shall have no obligation to, procure or renew any such required insurance policies and/or coverages and pay any and all premiums in connection therewith, and Contractor shall immediately repay all costs and expenses incurred by Owner in connection therewith upon demand by Owner, and the Owner shall have the right and privilege, at its sole election, to set off such costs and expenses against the Contract Sum and any period payments thereof otherwise unpaid and due to Contractor, without prior notice to or consent of Contractor.

AIA[®] Document A201[™] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Space Consolidation - GNO
1500 S. Main St.
Fort Worth, Texas 76104

THE OWNER:

(Name, legal status and address)

Tarrant County Hospital District d/b/a JPS Health Network
1500 S. Main Street
Fort Worth, Texas 76104
Telephone Number: 817-702-4932
Fax Number: 817-702-4940

THE ARCHITECT:

(Name, legal status and address)

Corgan
401 North Houston Street
Dallas, Texas 75202
Telephone Number: 214-748-2000

ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2. The Initial Decision Maker 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 Tarrant County Hospital District d/b/a JPS Health Network, a political subdivision of the State of Texas 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 specified in the Contract Documents or otherwise specifically and expressly designated in writing by the Owner as the Owner's project representative for this Project.

§ 2.1.2 The Owner shall furnish to the Contractor 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. Because the Owner is a political subdivision of the State of Texas, there can be no liens for labor, services or materials in connection with the Project and the claims for such labor, services and materials are governed by the payment and performance bond provisions of Texas Government Code Section 2253 (formerly known as and for the purposes of this Contract defined as the "McGregor Act"). The Owner will provide the information required by Texas Gov't Code Section 2253.026 to persons and entities submitting the proper requests for such information.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 The Owner shall have no obligation to furnish, prior to or after commencement of the Work, to the Contractor any evidence regarding the Owner's financial arrangements and/or resources to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Left blank intentionally.

§ 2.2.3 Left blank intentionally.

§ 2.2.4 Left blank intentionally.

§ 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 person or entity identified as the Architect in the Agreement (referred to throughout the Contract Documents as if singular in number) shall be a person or entity retained or employed by Owner who is lawfully authorized to practice architecture, in the jurisdiction where the Project is located.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall retain or 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. 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. The furnishing of any such surveys or reports by Owner shall not be construed or applied to relieve Contractor of its obligations and duties under this Contract in general or in particular with respect to Sections 3.2.1 and 3.2.2 of these General Conditions.

§ 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 and such Work remains uncorrected five (5) working days after written notice thereof from Owner, 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, whereupon the Contractor shall stop the Work as so directed in writing by Owner; 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. For the purposes of this Contract, the term "working day" shall mean any calendar day which is not a Saturday, Sunday or official holiday, as observed by the State of Texas for its employees.

§ 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 five (5) working 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. Contractor further acknowledges and agrees that it has had sufficient opportunity to visit and examine the site and all physical and other conditions affecting the Work and is fully familiar with all of the observable conditions affecting the same. In connection therewith,

Contractor specifically warrants to Owner that it has, by careful examination of the site, the Contract Documents, the soil borings and any data provided by Owner or otherwise in connection with the Contract Documents, satisfied itself as to : (1) the nature, location, and character of the Project and the site, including without limitation, the surface and subsurface conditions and all structures and obstructions, both natural and man-made, and all surface and subsurface water conditions of the site and the surrounding area; (2) the nature, location and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in a manner and within the cost and time 40 required by the Contract Documents. Except as limited by Texas Utilities Code Title 5, Chapter 251 (Call TESS), the Contractor shall be solely responsible for locating, prior to performing any Work, all active public utility lines, telephone company cables and lines, sewer lines, water lines, gas lines, and electrical lines. The Owner will reasonably assist (by providing information within the reasonable access and existing possession of the Owner) the Contractor in locating private utility lines within the Project area. The Contractor shall perform Work in such a manner as to avoid damaging any such lines, cables, pipes and pipelines.

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

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

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 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.

§ 3.4.4 The Contractor shall comply with all applicable State and Federal laws, including but not limited to laws concerning labor, environment, equal employment opportunity, safety and prevailing wage rates (collectively, the "Applicable Laws"). The Contractor shall fully indemnify and hold the Owner and the Project harmless of and from all costs and damages arising out of any claim or cause of action against it due to Contractor's failure to observe and comply with such Applicable Laws.

§ 3.4.5 After the Owner, with the assistance of the Architect, will consider, but will not be required to accept, a formal request from Contractor for the substitution of materials and/or equipment in place of those specified in the Instruments of Service, In submitting any request for such substitution of materials and/or equipment, the Contractor:

- .1 Warrants and represents to the Owner that the Contractor has personally investigated the proposed substitute materials or equipment and has determined that all of it is equal or superior in all material respects to that specified for the purposes intended by the Instruments of Service;
- .2 Warrants and represents to the Owner that the Contractor and, if applicable, the manufacturer will provide the same warranty for the substitution that the Contractor (and such manufacturer) would for the specified materials and equipment;
- .3 Certifies to the Owner that the cost data presented in connection with the substitution request is accurate and complete and includes all related costs and materials under this Contract required to purchase and incorporate the substitute products into the Work for the intended purpose, other than the costs and fees required to obtain the Architect's modification of the Instruments of Service to incorporate the substitute products;
- .4 Waives all claims for additional time and costs related to the substitution products not included in the submittal documents provided by Contractor prior to approval of the substitution products, to the extent subsequently encountered or incurred during the acquisition and installation of any approved substitute products after the approval thereof by Owner; and
- .5 Will order, acquire and coordinate the installation of any accepted substitute materials and/or equipment with the suppliers, subcontractors and laborers on the Project in all respects.

§ 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 Owner qualifies for exemption from State and local sales taxes pursuant to the provisions of the Texas Limited Sales, Excise and Use Act (Chapter 151 of the Texas Tax Code). The Contractor shall claim and take advantage of such exemption from payment of all applicable State of Texas and local sales taxes in compliance with all applicable provisions of Chapter 151 of the Texas Tax Code and by complying with all applicable procedures as may be prescribed by the Texas Comptroller of Public Accounts in connection with the claim of such exemption. To the extent that the Contractor shall fail to claim such exemption and shall pay any sales, consumer, use and similar taxes

for the Work, the cost thereof shall not be included in any cost or fee which the Owner is otherwise obligated to pay or reimburse Contractor under the terms and provisions of the Contract.

§ 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 accuracy and completeness 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 or the bidding requirements, 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.

§ 7.2.2 The Owner shall have a period of up to sixty (60) days to process and consider any request for Change Order submitted by Contractor, without affecting the Contract Time and without giving rise to any Claim for delay by Contractor.

§ 7.2.3 Any adjustment in the Contract Sum or the Contract Time associated with the subject matter of the Change Order that is not expressly included in the request for Change Order submitted by the Contractor or in any Change Order signed by the Contractor shall be deemed irrevocably waived by the Contractor.

§ 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 costs 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.

§ 7.3.11 In the event the provisions of Section 7.3.4 become applicable to determine a reasonable allowance for overhead and profit resulting from a Construction Change Directive, such reasonable allowance for combined overhead and profit to be added to the Contract Sum shall be determined in accordance with the following:

- .1 For the Contractor with respect to the Work attributable to the Construction Change Directive performed by Contractor's own employees and contract labor forces, an amount of overhead equal to ten percent (10%) of such portion of the Contractor's out-of-pocket cost and an amount for profit equal to five percent (5%) of such portion of the Contractor's out-of-pocket cost;
- .2 For the Contractor with respect to the Work attributable to the Construction Change Directive performed by Contractor's Subcontractor, an amount of combined overhead and profit equal to five percent (5%) of such amount due to such Subcontractor's Sub-subcontractor;
- .3 For each Subcontractor or Sub-subcontractor respect to the Work attributable to the Construction Change Directive performed by such Subcontractor or Sub-subcontractor's own respective employees and contract labor forces, an amount of overhead and profit equal to ten percent (10%) of such out-of-pocket cost incurred respectively by such Subcontractor or Sub-subcontractor;
- .4 For each Subcontractor with respect to the Work attributable to the Construction Change Directive performed by such Subcontractor's Sub-subcontractor(s), an amount of combined overhead and profit equal to five percent (5%) of such amount due to such Subcontractor's Sub-subcontractor(s);
- .5 All costs for the Work attributable to the Construction Change Directive performed by the Contractor, Subcontractors and Sub-subcontractors shall be determined in accordance with the terms and provisions of Section 7.3.4; and
- .6 In order to facilitate the determination of such costs attributable to a Construction Change Directive under Section 7.3.4, the itemized records and supporting data the Contractor is required to keep and provide to the Owner and Architect pursuant to Section 7.3.4 shall include a copy of all proposals, other than those determined by the Owner to be so minor and insignificant that their value can be readily determined by site observation, together with a copy of all signed proposals and/or invoices for costs for labor, services, materials and Subcontracts. In the event that a significant portion of such costs consists of Subcontracts, such Subcontracts shall be provided with copy of all signed proposals and/or invoices for costs for labor, services, materials, Subcontracts and Sub-subcontracts.

§ 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 and bonds required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces sufficient to provide a rate of progress indicated on the Progress Schedule and timely completion of the Work in accordance with the Contract Documents) 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 any applicable legal remedies; 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.

- .1 The period of time covered by each Application for Payment shall be one calendar month ending on the twenty-fifth (25th) day of each calendar month;
- .2 Until Substantial Completion, the Owner agrees to pay Contractor ninety-five (95%) of the amount that is due to the Contractor on account of progress payments in accordance with the terms of the Contract for Work completed pursuant to the Contract; and
- .3 Applications for Payment shall be submitted for payment by the Contractor using AIA Forms G702-1992 and G703-1992, and in addition, Contractor shall provide an Affidavit of Release of Liens, AIA Form G706A-1994, from each Subcontractor for each previously approved Pay Request with and as a condition to receipt of payment on each Application for Payment.

§ 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 Payments 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 and/or failure to commence reasonable efforts to cure defective Work within five (5) working days following written notice thereof and demand from the Owner;
- .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.

- .1 Provided an Application for Payment for Work performed in any calendar month is received by the Architect not later than the twenty-seventh (27th) calendar day of the calendar month in which Work has been performed ("Application Day"), the Owner shall make payment to the Contractor not later than the twenty-first (21st) day of the calendar month following the month in which the Application for Payment is received by the Architect. If an Application for Payment is received by the Architect after the Application Day in any calendar month, the payment for such Application for Payment shall

be made by the Owner not later than 30 days after the date the Architect receives such Application for Payment.

§ 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 is not then in default in 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, 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 (if any), 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 as required under Section 11.3.1.5 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.

§ 9.9.4 In the event of partial occupancy by Owner of a portion of the Work which the Owner agrees to accept separately (if any) as substantially complete ("Occupied Portion of the Work"), before Substantial Completion of all of the Work, the Contractor shall cooperate with the Owner in making available to the Owner's use and benefit at Owner's expense such building services as heating, ventilation, cooling, water, lighting, telephone, elevators and security reasonably required for the occupancy and use of the Occupied Portion of the Work (collectively, Building Services to Occupied Portion"), and if the Work required on the other portions of the Work to furnish such Building Services to the Occupied Portion is not entirely completed at the time the Owner begins to occupy such Occupied Portion of the Work, the Contractor shall make reasonable efforts to complete such Work or make temporary provisions for such Work in the other portions of the Work to provide the Building Services to the Occupied Portion as soon as reasonably possible so that such Building Services to the Occupied Portion may timely be put into operation and use.

§ 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 forms 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 terms "hazardous material or substance" and "hazardous materials or substances" shall have the meaning given to "hazardous substance" as specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time ("CERCLA") and includes "solid waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended from time to time ("RCRA"). If either CERCLA or RCRA is amended to broaden the meaning of any term defined thereby, the broader meaning shall apply after the effective date of the amendment. To the extent that Texas law establishes a meaning for "hazardous substance" or "solid waste" that is broader than that specified in either CERCLA or RCRA, the broader meaning shall apply. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. 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 hazardous 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 hazardous material or substance reported by the Contractor and, in the event such hazardous 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 hazardous material or substance or who are to perform the task of removal or safe containment of the hazardous 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 hazardous 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 applicable Texas 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 hazardous 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 hazardous 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 hazardous 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 or willful misconduct 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, to the extent permitted by applicable Texas law, indemnify the Contractor for all cost and expense thereby reasonably 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 is a political subdivision of the State of Texas, subject to the Texas Tort Claims Act (Tex. Civil Practice & Remedies Code Chapter 101), under which liability of Owner for tort claims is limited as provided in the Texas Tort Claims Act. The Owner is responsible for purchasing and maintaining or otherwise providing only such liability insurance, as Owner, in its sole discretion, may choose to purchase or provide. Owner may, in its sole discretion, self-insure as to all or any portion thereof.

§ 11.2.2 Failure to Purchase Required Property Insurance. The Contractor may, at its own cost and expense and in its sole discretion, obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. 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. If the Owner does not provide all or any part of such liability insurance coverage, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall have no duty or obligation to the Contractor for any of the costs or damages incurred by Contractor, Subcontractors or Sub-subcontractors attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. The Owner shall have not duty or obligation to provide notice to the Contractor of any impending or actual change, cancellation or expiration of any liability insurance coverage of Owner, and: (1) the Contractor shall have no right to stop the Work whether or not 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 not 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 such liability insurance of Owner been provided or had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be borne exclusively by Contractor.

§ 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, but such waiver is limited to the extent those losses are covered by property insurance required by or otherwise provided as described in the Agreement or other property insurance applicable to the Project, and such waiver does not include any rights as each of them respectively has 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 State of Texas, excluding any applicable choice of law rules.

§ 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 Omitted Intentionally.

§ 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 such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate established by applicable Texas law under Texas Government Code Sections 2251.022 and 2251.025.

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 accordance with the provisions of Section 14.1.3 and substantiated in accordance with the provision of 7.3.7 and 7.3.11.

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 a court of competent jurisdiction in Tarrant County, Texas and within the period specified by applicable Texas 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 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 the applicable legal remedies available in accordance with the provisions of the Contract.

§ 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 other applicable legal remedies 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 15.1.6 may, if both Contractor and Owner then agree to do so, be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

§ 15.3.2 If the parties then agree to mediate any Claim, 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.

§ 15.3.3 If the parties then agree to mediate any Claim, 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 OMITTED INTENTIONALLY

ARTICLE 16 DEPARTMENT OF HEALTH AND HUMAN SERVICES DOCUMENT REQUIREMENTS

§ 16 COMPLIANCE WITH DEPARTMENT OF HEALTH AND HUMAN SERVICES DOCUMENT REQUIREMENTS

§ 16.1 The Contractor will make available upon written request by the Secretary of Health and Human Services, the Comptroller General, or their duly authorized representative, any and all contracts, books, documents and records necessary to certify the nature and extent of the cost of such services as required by United States Code, Title 42 Chapter 7, Subchapter XVIII, Part E, Section 1395x, Subsection (v)(1)(I) (1965 & Supp. 1, 1978), as amended by Act of December 5, 1980 Pub. L. 96-499, and such other criteria and procedures as may be developed by the Department of Health and Human Services. Such contracts, books, documents and records shall be retained and maintained by Contractor for the period ending four (4) years after the date of Final Completion of the Project.

§ 16.2 If the Contractor carries out any of the duties or obligations under this Contract by entering into any subcontract with any other persons, corporation or individual, which subcontract has a total value or cost for such subcontracted duties or services which is equal to or in excess of Ten Thousand Dollars (\$10,000.00) over any 12 month period, said subcontract shall contain a clause titled "Availability of Records" and providing for the availability of such subcontract, books, documents and records necessary to certify the cost of such services subcontracted in the same manner and for the same time period as provided for Contractor in Section 15.1.

ARTICLE 17 TARRANT COUNTY HOSPITAL DISTRICT HISTORICALLY UNDERUTILIZED/ SMALL, MINORITY, WOMEN AND VETERAN BUSINESS ENTERPRISE PROCEDURE

§ 17 Contractor acknowledges that it is the policy of Owner to involve Historically Underutilized Business/Small, Minority, Women and Veteran Business Enterprises ("HUB/SMWVBE") in its procurement practices and to provide equal opportunities to compete for construction contracts, provision of professional services, and the purchase of equipment and supplies required by the Owner. Attached hereto and incorporated herein for the purposes of this Section 17 is the following attachment ("Good Faith Evaluation Form"):

Good Faith Evaluation Form Regarding LD 6000/6001 Supplier Diversity Policy and Procedure Form

The proposal submitted by Contractor in connection with the Contract was required to contain a submittal by Contractor of each of a fully completed Good Faith Evaluation Form, which becomes part of the Contract. Contractor further acknowledges and agrees that if the Good Faith Evaluation Form is not incomplete or unresponsive, then any bid proposal so submitted has the effect of rendering the entire Contractor's bid proposal non-responsive and unacceptable to Owner.

ARTICLE 18 DRUG TESTING

§ 18 Owner reserves, and shall have, the right to perform random drug tests of the work force at the Project site during the performance of the Work. Contractor shall require each of its subcontractor's employees agree to such random drug testing as a condition of employment or engagement to work on the Project.

Proposal to Provide General
Construction Services for



SPACE CONSOLIDATION - GNO

RFP No. 19-1011

NOVEMBER 18, 2021

Submitted By:



EXECUTIVE SUMMARY & COVER LETTER

1



G. W. C. WHITING
(1883-1974)

WILLARD HACKERMAN
(1918-2014)

TIMOTHY J. REGAN
PRESIDENT AND CEO

FOUNDED 1909

THE WHITING-TURNER CONTRACTING COMPANY

ENGINEERS AND CONTRACTORS

CONSTRUCTION MANAGEMENT
GENERAL CONTRACTING
DESIGN-BUILD
SPECIALTY CONTRACTING
PRECONSTRUCTION
BUILDING INFORMATION MODELING
INTEGRATED PROJECT DELIVERY

301 SOUTH HENDERSON
FORT WORTH, TEXAS 76104

INSTITUTIONAL
COMMERCIAL
CORPORATE
TECHNOLOGY
INDUSTRIAL/PROCESS
INFRASTRUCTURE
SUSTAINABILITY

November 18, 2021

Zach Miller
Planning-Design-Construction
JPS Health Network
Planning, Design & Construction Offices
1500 South Main Street
Fort Worth, TX 76104

RE: RFP NO. 19-1011: Space Consolidation - GNO

Dear Zach,

As previously demonstrated while working on the JPS Campus and further outlined in our response to this RFP, Whiting-Turner possesses all the qualities that you expect and deserve in a construction partner. We have assembled a team that has the experience, passion and expertise to complete the Space Consolidation and SIM Lab project.

Specifically, our proposed project team:

- Understands the expectations, protocols and procedures of working on the active JPS Campus
- Has local relevant experience in interior finish out work
- Operates as an open communicator, teammate and construction partner

With this experience, we have carefully considered our available resources, the scope of work and location of this project, and are confident that we have proposed an excellent team to successfully deliver this important renovation for JPS.

We trust that you will call on our resources and draw on your colleague's recent experience with our team to understand how we work to delight our customers and deliver projects of the highest quality. We recognize the importance of your decision to select the best construction partner to deliver this renovation and are hopeful to be selected as your Construction Manager.

We look forward to hearing from you soon.

Sincerely,

The Whiting-Turner Contracting Company



C. Brent Schoolfield
Senior Project Manager

LOCAL ADDRESS

Tarrant County Office:
301 S. Henderson Street
Fort Worth, TX 7610

O: 817-725-7700

POINT OF CONTACT



Brent Schoolfield
Senior Project Manager - Ft. Worth

O: 817-725-7700
C: 469-853-1774
Email: Brent.

HEADQUARTERS



300 East Joppa Rd.
Baltimore, MD

COMPANY OFFICERS

Daryl Steinbeck
Senior Vice President - Texas

Kit Fawthrop
Vice President

Michael Kersey
Division Vice President - Fort
Worth

Evan McKee
Vice President

Joel Popp
Vice President

Matthew Andrews
Vice President

**In the interest of brevity, we
have only included officers of the
company located within North
Texas.**

VALUES

integrity.
excellence.
experience.
leadership.

OFFICES NATIONWIDE



CAPABILITY TO PROVIDE CONSTRUCTION SERVICES

2




AIA® Document A310™ – 2010
Bid Bond**CONTRACTOR:***(Name, legal status and address)*

The Whiting-Turner Contracting Company
 300 East Joppa Road
 Baltimore, MD 21286

SURETY:*(Name, legal status and principal place of business)*

Fidelity and Deposit Company of Maryland
 1299 Zurich Way
 Schaumburg, IL 60196-1056

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

Tarrant County Hospital District d/b/a/ JPS Health Network
 1500 South Main Street, Fort Worth, TX 76104

BOND AMOUNT: \$ 5% of amount bid**PROJECT:***(Name, location or address, and Project number, if any)*

JPS - Space Consolidation - GNO (HIM Consolidation & Sim Lab)

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Init.

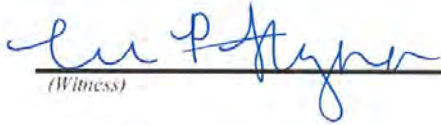
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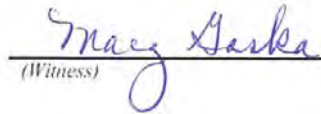
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18th
Signed and sealed this ^ day of November, 2021


(Witness)


(Witness)

The Whiting-Turner Contracting Company
(Contractor as Principal)  (Seal)

(Title) JONATHAN S. HESS, EXECUTIVE VICE PRESIDENT
Fidelity and Deposit Company of Maryland
(Surety) (Seal)

(Title) Craig Bancroft, Attorney-in-Fact

Init.

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(812930934)

Texas Department of Insurance Amended Certificate of Authority

License no. 93770

Licensed since: December 7, 1981

Department Certification

Fidelity and Deposit Company of Maryland
(foreign stock fire and casualty company)
organized under the laws of the state of Illinois

This entity has complied with the laws of the state of Texas, as applicable, and is authorized to transact the following lines of insurance:

Aircraft Liability, Aircraft Physical Damage, Allied Coverages, Auto Physical Damage, Automobile Liability, Boiler & Machinery, Burglary & Theft, Credit, Fidelity & Surety, Fire, Forgery, Glass, Inland Marine, Liability Other than Auto, Workers Comp and Emp Liability

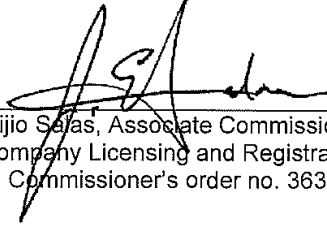
This amended certificate of authority is in full force and effect until it is revoked, canceled, or suspended according to law.

Given under my hand and official seal of office
in the city of Austin,

February 28, 2019

KENT C. SULLIVAN
COMMISSIONER OF INSURANCE

BY


Eljio Selas, Associate Commissioner
Company Licensing and Registration
Commissioner's order no. 3632



**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by Robert D. Murray, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Stephen M. MUTSCHELLER, Emily BRENNAN, Robert F. WHITE, Gary L. BERGER, R. Nelson OSTER, Craig BANCROFT, Joshua B. HAUSERMAN, William FRANCIK, Jonathan KIBLER, George CAMPBELL, Mary GOSKA, Jamie LAWRENCE, Jennifer SCHIAZZA of Hunt Valley, Maryland, EACH, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 29th day of April, A.D. 2021.



ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: Robert D. Murray
Vice President

By: Dawn E. Brown
Secretary

State of Maryland
County of Baltimore

On this 29th day of April, A.D. 2021, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, Robert D. Murray, Vice President and Dawn E. Brown, Secretary of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2023

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 18th day of November, 2021.



By: Brian M. Hodges
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
www.reportsfclaims@zurichna.com
800-626-4577

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

STATEMENT OF QUALIFICATIONS

ORGANIZATION

Type of Organization: Corporation
Type of work Performed: General Construction, Construction Management
Years in Operation as a Contractor: 112
Years in Business Under Present Business Name: 112
Date of Incorporation: April 12, 1934
State of Incorporation: Maryland
President's Name: Timothy Regan
Secretary's Name: Frank R. Palmer
Treasurer's Name: Anthony Moag

LICENSING

Jurisdictions and trade categories in which your organization is legally qualified to do business:
 Please see list of State Licenses to follow.
Categories of work that your organization normally performs with its own forces:
 Although Whiting-Turner is capable of performing some work with its own forces, we do not anticipate self-performing any work beyond our general conditions and small craft labor.

EXPERIENCE

Has your organization ever failed to complete any work awarded to it?
 No

Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

Whiting-Turner is rarely involved in litigation; however, since the company typically constructs approximately 800 to 900 projects per year and enters approximately 15,000 subcontracts annually, there are obviously bound to be some disagreements that reach the litigation stage, a few with owners, others claims by subcontractors often involving mechanic's liens. Many of these matters are eventually settled. Also, there are occasional accidents and claims of injuries, principally by employees of

subcontractors, which result in litigation. The various insurance carriers involved typically defend these matters.

Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five years?

Yes. There have been a few suits against owners for non-payment and a few suits against subcontractors for non-performance.

Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)

No.

Major construction projects your organization has in progress:

In the interest of brevity, we have included a list for the senior vice president under whom this project will fall.

Total worth of work in progress and under contract:

In progress: \$23.532 billion; backlog: \$13.784 billion (as of 05/2021)

Major projects your organization has completed in the past five years:

In the interest of brevity, we have included a list for the senior vice president under whom this project will fall.

Average annual amount of construction work performed during the past five years:
 \$8.343 billion (2016-2020)

Construction experience and present commitments of the key individuals of your organization.

Please see the attached resumes.

REFERENCES

Trade References:

Berger Engineering Company
 Scott Berger, Executive Vice President
 (214) 358-4451

G&L Mechanical
 Ron Adams, Owner
 (972) 438-4010

Gentzler Electrical
 Scott Newell, Vice President
 (214) 341-2890

Bank References:

PNC Bank, N.A.
 One East Pratt Street
 Baltimore, Maryland 21202
 Mr. John Hehir, Senior Vice President
 410-237-4573

Wilmington Trust
 Rodney Squsre North, 1100 North Market Street, 9th Floor
 Wilmington, Delaware 19890
 Mr. Wilmer Stith, CFA
 Vice President
 410-986-5628

Name of bonding company:

Zurich American Insurance Company; bonding capacity:
 \$4 billion

Name and address of agent:

HMS Insurance Associates, Inc.
 20 Wight Avenue, Suite 300
 Hunt Valley, Maryland 21030
 Mr. Craig Bancroft, Senior Vice President
 410-337-9755

FINANCING

Financial Statement:

See attached Balance Sheets to follow.

Name and address of firm preparing attached financial statement, and date thereof:

Clifton Larson Allen LLP
 Timonium Corporate Center
 9515 Deereco Road, Suite 500
 Timonium, Maryland 21093

Date of Statement: 12/31/2020

Will the organization whose financial statement is attached act as guarantor of the contract for construction?
 Yes.



STATE LICENSES

State	License Number (If applicable)	Applicable Certificates	Renewal
Alabama	21350	Contractors License	07/31/2020
Arizona	ROC079287 Class B	Certificate of Authority	06/30/2021
Arizona	256012 Class A	General Engineering License	05/31/2021
Arkansas	0059990621	Contractor License	06/30/2021
California	311107	Certificate of Authority	07/31/2021
Colorado	Not Required	Certificate of Authority	N/A
Connecticut	900097	Contractor License	06/30/2020
Delaware	1993108941	Contractor-Resident, Certificate of Authority	12/31/2021
D.C.	70100533	Business License	12/31/2021
Florida	CGC061762	Contractor License (Tampa)	08/31/2020
Florida	CGC053443	Contractor License (Ft. Lauderdale)	08/31/2020
Georgia	GCCO000924	State License	06/30/2020
Hawaii	CT-35530	Contractor License	09/30/2020
Idaho	RCE-36291	Contractor License	11/12/2020
Illinois	Not Required	Certificate of Authority	N/A
Indiana	Not Required	Certificate of Authority	N/A
Iowa	C096864	Contractor Registration	03/29/2021
Kansas	Not Required	Certificate of Authority	N/A
Kentucky	Not Required	Certificate of Authority	N/A
Louisiana	5588	Contractor License	04/08/2021
Maine	Not Required	Certificate of Authority	N/A
Maryland	03423865	Business License	05/30/2020
Massachusetts	Not Required	Certificate of Authority	N/A
Michigan	Not Required	Certificate of Authority	N/A
Minnesota	Not Required	Certificate of Authority	N/A
Mississippi	11504-MC	Contractor License	01/30/2021
Missouri	F00011940	Certificate of Authority	04/30/2021

State	License Number (If applicable)	Applicable Certificates	Renewal
Montana	34415	Contractor Registration	02/16/2022
Nebraska	45691-20	Contractor Registration	05/15/2021
Nevada	NV19821000674	Business License	01/31/2021
Nevada	A-68086	Contractor License-Engineering Classification	03/31/2021
Nevada	B-33400	Contractor License-General Classification	06/30/2021
Nevada	C-68079	Contractor License-Concrete Classification	03/31/2021
New Hampshire	Not Required	Certificate of Authority	N/A
New Jersey	Not Required	Classification	10/20/2020
New Mexico	85386	Permit License	05/31/2022
New York	Not Required	Certificate of Authority	N/A
North Carolina	3099	Contractor License	12/31/2020
North Dakota	55003	Class A Contractor License	03/01/2021
Oregon	209733	Contractor License	03/22/2022
Ohio	Not Required	Certificate of Authority	N/A
Oklahoma	Not Required	Certificate of Authority	N/A
Pennsylvania	Not Required	Certificate of Authority	N/A
Rhode Island	21965	Contractor License	08/01/2020
South Carolina	629	CM Certificate	10/31/2020
South Dakota	73-001-520529450E-ET-001 (Tax License)	Certificate of Authority	N/A
Tennessee	00029564	Contractor License	08/31/2020
Texas	Not Required	Certificate of Authority	N/A
Utah	273858-5501	Contractor License	11/30/2021
Vermont	Not Required	Certificate of Authority	N/A
Virginia	2701000748	Contractor License	03/31/2021
Washington	600-594-886	Certificate of Authority	08/31/2020
Washington	WHITITC099LG	Contractor License	09/17/2021
West Virginia	WV001768	Contractor License	08/12/2020
Wisconsin	Not Required	Certificate of Authority	N/A

RFP FOR CONSTRUCTION SERVICES FOR THE Space Consolidation - GNO
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EXHIBIT “G”

Conflict of Interest Questionnaire

Chapter 176 to the Texas Local Government Code (“Chapter 176”) contains provisions mandating the public disclosure of certain information concerning persons doing business or seeking to do business with TCHD (“**Disclosure Information**”). The Disclosure Information relates to affiliations, and business and financial relationships such persons may have with members of TCHD’s governing body, its officers and certain other high level TCHD employees. Each Respondent is charged with the responsibility of becoming familiar with the requirements of Chapter 176 and for complying with the applicable provisions thereof.

Each Respondent shall complete the Conflict of Interest Questionnaire set forth below and shall return the completed Conflict of Interest Questionnaire with its Proposal.

A complete copy of Chapter 176 of the Local Government Code may be found at:

<https://statutes.capitol.texas.gov/Docs/LG/htm/LG.176.htm>

For easy reference, the relevant portion of Sections 176.001(1-a), 176.003(a)(2)(A) and (B), and 176.006(a) and (a-1) of Chapter 176 are cited below on this **Exhibit “G”**.

Local Government Code § 176.001(1-a): “Business relationship” means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**RFP FOR CONSTRUCTION SERVICES
FOR THE Space Consolidation - GNO**
Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

[Balance of page left blank intentionally. The Conflict of Interest Questionnaire follows.]

RFP FOR CONSTRUCTION SERVICES FOR THE Space Consolidation - GNO

CONFLICT OF INTEREST QUESTIONNAIRE For Respondent doing business with local governmental entity	
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a Respondent who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the Respondent meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the Respondent becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A Respondent commits an offense if the Respondent knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY Date Received
1 Name of Respondent who has a business relationship with local governmental entity.	
2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)	
3 Name of local government officer about whom the information is being disclosed.	_____ Name of Officer
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.	
Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the Respondent? <div style="display: flex; justify-content: center; gap: 50px; margin-top: 5px;"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div>	
A. Is the Respondent receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? <div style="display: flex; justify-content: center; gap: 50px; margin-top: 5px;"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div>	
5 Describe each employment or business relationship that the Respondent named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.	
6 <input type="checkbox"/> Check this box if the Respondent has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).	
7 <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 10px;"> <div style="text-align: center;"> <p>DocuSigned by:</p> <p>E9E9688F78C04C3...</p> </div> <div style="text-align: right;"> <p>11/18/2021</p> </div> </div>	
<div style="display: flex; justify-content: space-between;"> Signature of Respondent doing business with the governmental entity Date </div>	

RFP FOR CONSTRUCTION SERVICES FOR THE Space Consolidation - GNO

EXHIBIT "E"

Vendor Certification Form

Instructions:

Vendors doing business with the District are requested to complete this form in its entirety. If you are a Disadvantaged Business Enterprise, the requested information pertains to the owner(s) of the company. This form must be signed and dated by an authorized representative of your company.

Respondent's Name: The Whiting-Turner Contracting Company

Years in business under same name: 112 Previous Name: N/A

General E-mail Address: michael.kersey@whiting-turner.com

Current Address: 301 S. Henderson Street, Fort Worth, TX 76104

Sales Rep/Customer Service Name: Brent Schoolfield

E-mail Address: brent.schoolfield@whiting-turner.com

Sales Rep/Customer Service Phone#: (817) 725-7700

Fax#: N/A

Accounts Receivable Contact Name: Brent Schoolfield

Phone # (817) 725-7700

TCHD Account # N/A

List your major commodities:**CHECK ALL THAT APPLY WITH RESPECT TO MAJOR COMMODITY:**

☐ Supply ☐ Equipment ☒ Service (List type of service, i.e. temp. agency, surveyor, etc: General Contractor)

☐ Consultant ☐ Distributor ☐ Manufacturer ☒ Contractor ☐ Subcontractor

Approximate dollar volume of business with the District in past twelve (12) months: \$ \$750,000.00

ETHNICITY OF COMPANY'S AMERICAN OWNERSHIP (PLEASE place an X in the appropriate box:

☐ ASIAN PACIFIC

☐ AFRICAN AMERICAN

☐ CAUCASIAN

☐ HISPANIC

☐ NATIVE AMERICAN

☒ OTHER _____
(SPECIFY)

PUBLIC OWN STOCK:

☐ YES ☒ NO

MAJORITY OWNER:

☐ MALE ☐ FEMALE

INCLUDE THE FOLLOWING:

Copy of certificate signed by: Michael Kersey Texas, North Central Texas Regional Certification Agency (NCTRCA), Historically Underutilized Businesses, confirming your business as being a women/minority-owned or small business enterprise.

Signature: Michael Kersey

E9E9688F78C04C3

Title: Division Vice President

Print Name: Michael Kersey "F"

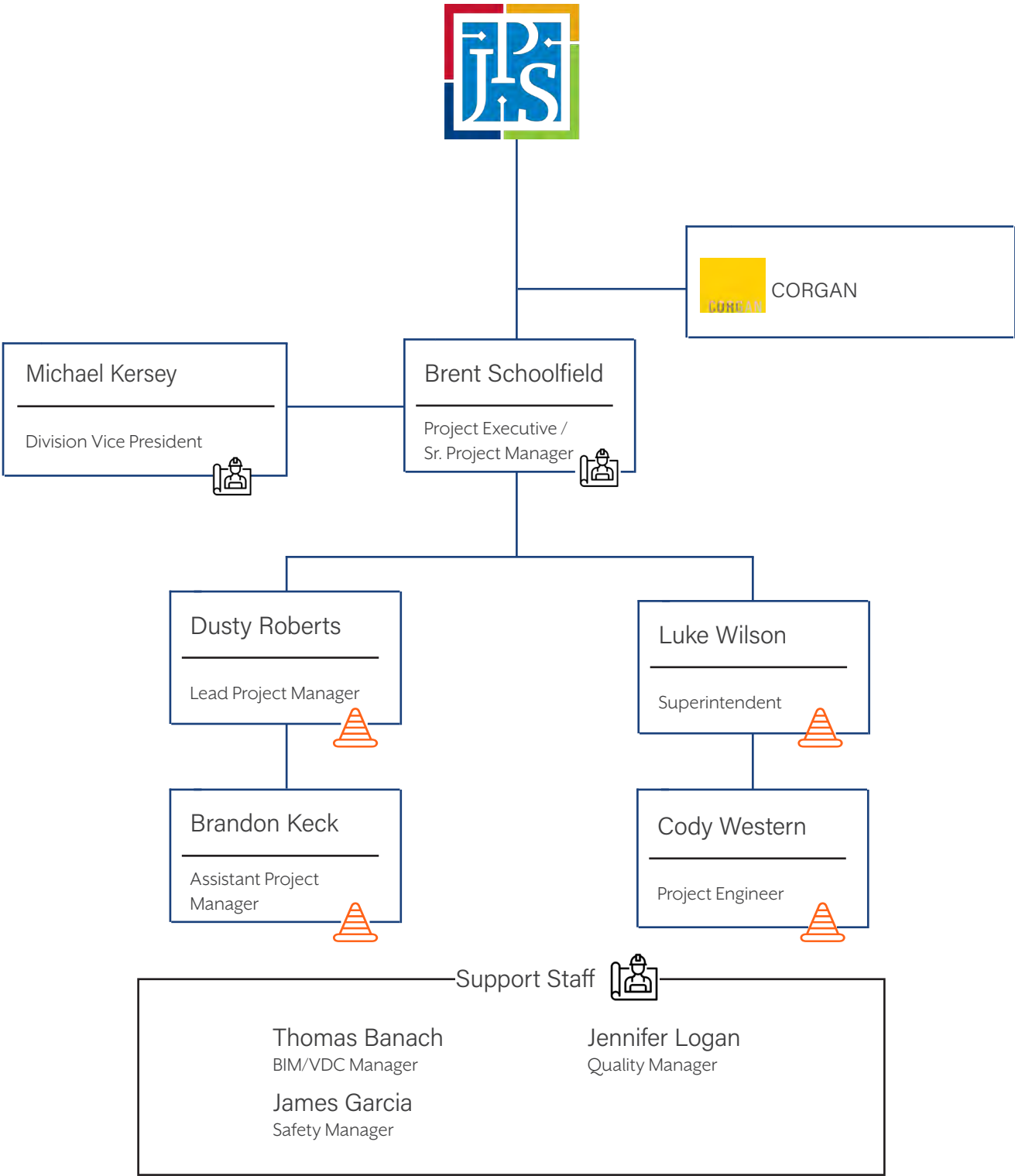
Date: 11/18/2021

STAFFING PLAN

3



STAFFING PLAN





Brent Schoolfield

SR. PROJECT MANAGER | PROJECT EXECUTIVE
FORT WORTH REPRESENTATIVE

KEY QUALIFICATIONS:

- 15 years with Whiting-Turner
- Renovation Experience
- JPS project experience with Dusty Roberts, Luke Wilson, Brandon Keck & Cody Western
- Healthcare Experience
- LEED Certified

EDUCATION

Bachelor of Science,
Construction Science, Texas
A&M University, 2005

REFERENCES

Chris Herman, CDP
Trademark Property Company
Vice President of Construction
(817) 810-5321
cherman@trademarkproperty.com

Adam Brewster, ASLA
Senior Discipline Lead
Dunaway Associates, L.P.
(817) 632-4768
abrewster@dunawayassociates.com

Michael Fouraker
Fort Worth Zoo
Executive Director
(817) 759-7590
MFouraker@fortworthzoo.org

PROJECT HISTORY

JOHN PETER SMITH HEALTH NETWORK

JPS - BHU Risk Mitigation

The JPS Behavioral Health Unit Risk Management Project was a two-phase project and included an interior and exterior aspect. On the exterior, an existing Behavior Health Courtyard was completely renovated including drilled piers, structural shade systems, rubberized floor systems, turf, irrigation, plants and ground cover. This first phase was complete while maintaining a protected Behavior Health approved fire egress through the courtyard. Interior improvements included door and hardware replacement, updates to finishes, plumbing and electrical fixture replacement. Work done inside was carefully executed while floors were occupied, and without impacting department capacities. *Tarrant County*, Fort Worth, TX. \$832,990.00

PARKLAND HEALTH & HOSPITAL SYSTEMS

Psych ED & ER Renovations

This project involved the **renovation to a psychiatric emergency department, emergency room, one new roof top air handling unit and the replacement of cooling coils on an existing unit. The project required shift work due to the short duration of the schedule.** We also provided design-assist services. Dallas, TX. \$2.5 million

New Parkland Hospital Parking Garage

Eight-level, 740,000 SF, 1,700-space cast-in-place parking garage for the new Parkland Hospital campus in Dallas, TX. Ground floor features approximately 10,000 SF of retail shell space serviced by chilled water for retail tenant mechanical systems. Architectural skin includes exposed concrete, custom aluminum grating system, glazed curtain wall system, aluminum composite panels and architectural precast concrete panels. MEP systems include 300kW generator, LED lighting and a 32kW photovoltaic system. Security systems include video surveillance, access control, mass notification and emergency phones. Parking management and control system includes a fully automatic parking count system, pay-on-foot stations and (2) cashier booths. **This project has achieved LEED® Silver certification.** Dallas, TX. \$24.5 million

CANYON-AGASSI CHARTER SCHOOL

KIPP DFW - Destiny Campus

Phased renovation (repurpose) of existing 76,996 SF department store into Charter School. Includes classrooms, multipurpose rooms, administrative space, food service, etc. Exterior improvements, MEP upgrades, new entry features and play area. Dallas, TX. \$3.2 million



Dusty Roberts

LEAD PROJECT MANAGER

Joined Whiting-Turner in 2019.

KEY QUALIFICATIONS:

- JPS project experience with Brent Schoolfield, Luke Wilson, Brandon Keck & Cody Western
- Knowledge of JPS campus
- Relationship with JPS faculty/staff
- Healthcare Experience

EDUCATION

Bachelor of Science,
Industrial Technologies/
Construction Management,
Texas State University, 2009

REFERENCES

Andy Nray
Mustard Design
(830) 456-7849

Brad Naeher
Schwarz hanson
Principal
(713) 515-1408
brad@schwarz-hanson.com

Richard Watters
BHB
Principal
(817) 773-0901
rwatters@bhbinc.com

PROJECT HISTORY

JOHN PETER SMITH HEALTH NETWORK

JPS - BHU Risk Mitigation

The JPS Behavioral Health Unit Risk Management Project was a two-phase project and included an interior and exterior aspect. On the exterior, an existing Behavior Health Courtyard was completely renovated including drilled piers, structural shade systems, rubberized floor systems, turf, irrigation, plants and ground cover. This first phase was complete while maintaining a protected Behavior Health approved fire egress through the courtyard. Interior improvements included door and hardware replacement, updates to finishes, plumbing and electrical fixture replacement. Work done inside was carefully executed while floors were occupied, and without impacting department capacities. *Tarrant County*. Fort Worth, TX. \$832,990.00

CONFIDENTIAL CLIENT

Confidential Project

Project Duration: 1 Year

Program management, pre-construction and construction of multiple new green-field data centers totaling more than 100,000SF. Designs were state of the art incorporating a myriad of innovative and energy efficient strategies. These were all "Mission Critical" facilities. They incorporated master plan / site design & development; site utilities; fast track & phased green-field building construction; critical infrastructure; utility substations; large- and small-scale central utility plants; large scale generation plants; critical environment construction; office & support spaces; high, medium, & low voltage distribution systems & associated equipment; combined air & water side mechanical distribution systems, & multiple redundancy levels. Confidential location. Confidential Cost.

MORNING STAR PARTNERS

The Historic Star - Telegram Building

First-floor fit-out for museum space / Second & Third floor high end office finish out. The Historic Star-Telegram Building was built out over the entire 1900's. Three major portions of the building were built in 19teens, 1940's, and 1970's to create one building. Overcoming issues was a daily occurrence as each individual wall was removed. As the PM over this reconstruction I oversaw the restoration of three buildings to finally turn them into one through design build processes. The aesthetics of the build both internally and exterior were to be a recreation of the original 1917 building. This was achieved by close coordination with the design team. The building has since won awards for historic preservation.



Brandon Keck

ASSISTANT PROJECT MANAGER

Joined Whiting-Turner in 2018.

KEY QUALIFICATIONS:

- JPS project experience with Brent Schoolfield, Dusty Roberts, & Luke Wilson
- Knowledge of JPS campus
- Relationship with JPS faculty/staff
- Healthcare Experience

EDUCATION

Bachelor of Science, Engineering,
Abilene Christian University, 2016

REFERENCES

Curtis Archibald
Senior Associate
Turner and Townsend
(602) 618-1529

Lou Mattingly
JPS Health Network
Director of Design & Construction
LMatting@jpshealth.org
(817) 702-4941

Erik Hale, P.E.
Vice President, Project Director
POWER Engineers, Inc.
(503) 781-2347

PROJECT HISTORY

JOHN PETER SMITH HEALTH NETWORK

JPS - Responsibilities

Tarrant County - Fort Worth, TX

Joining the Whiting-Turner team after the conclusion of the JPS - BHU Risk Mitigation project, Brandon served as a vital role to the Whiting-Turner team, as well as the JPS team. While at JPS, Brandon as taken on the following responsibilities:

- Coordinated with contractors on schedules for completing Laminate and Wood repair/Fire and Smoke Barrier scopes.
- Created and submitted PCRA/ICRA permits for Laminate and Wood Repair, Fire and Smoke Barrier projects.
- Created Breakout Projects for Laminate & Wood/Fire and Smoke projects.
- Performed daily field walks/Verification of subcontractor work and that the correct permits are in place.
- Provide proposals for client requested projects.
- Coordinate and manage subcontracts for these scopes through completion.
- Compile and submit PO requests, invoices, etc. for client
- Coordinate with field staff on a daily basis for scheduling of contractors and making sure all permits are in place.

CONFIDENTIAL CLIENT

Confidential Project

Project Duration: 2.5 Years

Program management, pre-construction and construction of multiple new green-field data centers totaling more than 100,000SF. Designs were state of the art incorporating a myriad of innovative and energy efficient strategies. These were all "Mission Critical" facilities. They incorporated master plan / site design & development; site utilities; fast track & phased green-field building construction; critical infrastructure; utility substations; large- and small-scale central utility plants; large scale generation plants; critical environment construction; office & support spaces; high, medium, & low voltage distribution systems & associated equipment; combined air & water side mechanical distribution systems, & multiple redundancy levels. Confidential location. Confidential Cost.



Luke Wilson

SUPERINTENDENT

Joined Whiting-Turner in 2018.

KEY QUALIFICATIONS:

- JPS project experience with Brent Schoofield, Dusty Roberts, Brandon Keck & Cody Western
- Knowledge of JPS campus
- Relationship with JPS faculty/staff
- Healthcare Experience

EDUCATION

Bachelor of Science, Construction Management, University of Louisiana-Monroe, 2018

REFERENCES

Clark Todd Gollotte, AIA, EDAC, NCIDQ
GH2 Architects
Associate Principal
ctg@gh2.com
(918) 240-8585

Amanda Schweng
JPS Health Network
Director of JPS Behavioral Health
aschweng@jpshealth.org
(469) 260-2380

Lou Mattingly
JPS Health Network
Director of Design & Construction
LMatting@jpshealth.org
(817) 702-4941

PROJECT HISTORY

JOHN PETER SMITH HEALTH NETWORK

JPS - Behavioral Health Risk Mitigation

The JPS Behavioral Health Unit Risk Management Project was a two-phase project and included an interior and exterior aspect. On the exterior, an existing Behavior Health Courtyard was completely renovated including drilled piers, structural shade systems, rubberized floor systems, turf, irrigation, plants and ground cover. This first phase was complete while maintaining a protected Behavior Health approved fire egress through the courtyard. Interior improvements included door and hardware replacement, updates to finishes, plumbing and electrical fixture replacement. Work done inside was carefully executed while floors were occupied, and without impacting department capacities.

Tarrant County. Fort Worth, TX. \$832,990.00

CONFIDENTIAL CLIENT

Confidential Project

Project Duration: 2.5 Years

Program management, pre-construction and construction of multiple new green-field data centers totaling more than 100,000SF. Designs were state of the art incorporating a myriad of innovative and energy efficient strategies. These were all "Mission Critical" facilities. They incorporated master plan / site design & development; site utilities; fast track & phased green-field building construction; critical infrastructure; utility substations; large- and small-scale central utility plants; large scale generation plants; critical environment construction; office & support spaces; high, medium, & low voltage distribution systems & associated equipment; combined air & water side mechanical distribution systems, & multiple redundancy levels. Confidential location. Confidential Cost.



Cody Western

PROJECT ENGINEER

Joined Whiting-Turner in 2019.

KEY QUALIFICATIONS:

- JPS project experience with Brent Schoolfield, Dusty Roberts, & Luke Wilson
- Knowledge of JPS campus
- Relationship with JPS faculty/staff
- Healthcare Experience

EDUCATION

Bachelor of Science, Construction Engineering, University of North Texas, 2019

REFERENCES

Lou Mattingly
JPS Health Network
Director of Design & Construction
LMatting@jpshealth.org
(817) 702-4941

Tommy Frettoloso
Director of Construction Services
Turner Impact Capital
(972) 827-6036

Clark Todd Gollotte, AIA, EDAC,
NCIDQ
GH2 Architects
Associate Principal
ctg@gh2.com
(918) 240-8585

PROJECT HISTORY

JOHN PETER SMITH HEALTH NETWORK

JPS - Behavioral Health Risk Mitigation

The JPS Behavioral Health Unit Risk Management Project was a two-phase project and included an interior and exterior aspect. On the exterior, an existing Behavior Health Courtyard was completely renovated including drilled piers, structural shade systems, rubberized floor systems, turf, irrigation, plants and ground cover. This first phase was complete while maintaining a protected Behavior Health approved fire egress through the courtyard. Interior improvements included door and hardware replacement, updates to finishes, plumbing and electrical fixture replacement. Work done inside was carefully executed while floors were occupied, and without impacting department capacities.

Tarrant County, Fort Worth, TX. \$832,990.00

CONFIDENTIAL CLIENT

Confidential Project

Project Duration: 1 Year

Program management, pre-construction and construction of multiple new green-field data centers totaling more than 100,000SF. Designs were state of the art incorporating a myriad of innovative and energy efficient strategies. These were all "Mission Critical" facilities. They incorporated master plan / site design & development; site utilities; fast track & phased green-field building construction; critical infrastructure; utility substations; large- and small-scale central utility plants; large scale generation plants; critical environment construction; office & support spaces; high, medium, & low voltage distribution systems & associated equipment; combined air & water side mechanical distribution systems, & multiple redundancy levels. Confidential location. Confidential Cost.

PROJECT APPROACH & SAFETY PLAN

4



PROJECT APPROACH

As your partner in construction, **Whiting-Turner's ultimate goal is to deliver a safe construction project**, of the highest quality, without any disruption to the care that is provided at JPS.

Our proposed team has recent experience working in sensitive areas on the JPS Campus and is familiar with the location of this project. We understand that the area in which this project is to be completed is in **the middle of an active hospital campus – not a greenfield construction site**.

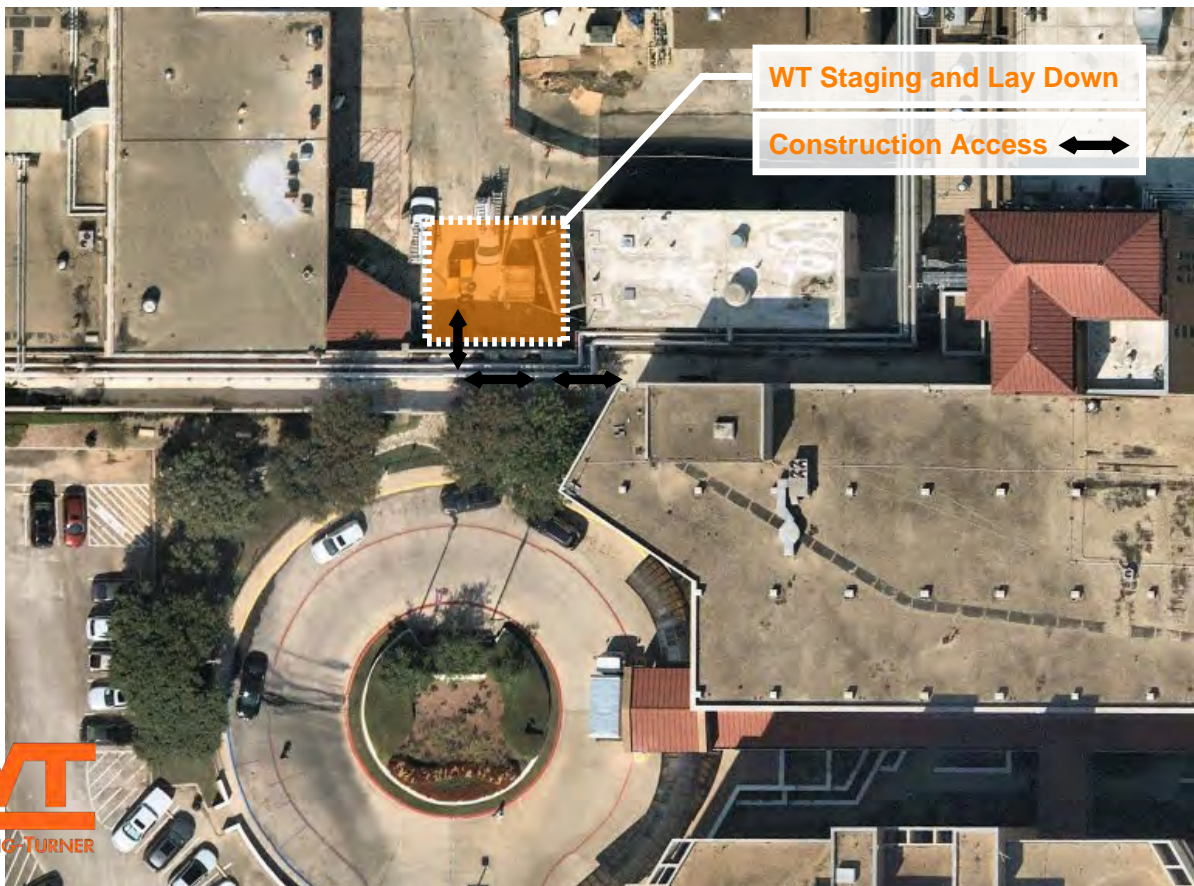
The location of the HIM Consolidation and Sim Lab Project is ideal for material delivery, trade partner entry and egress, removal of demolition debris and construction refuse. Considering

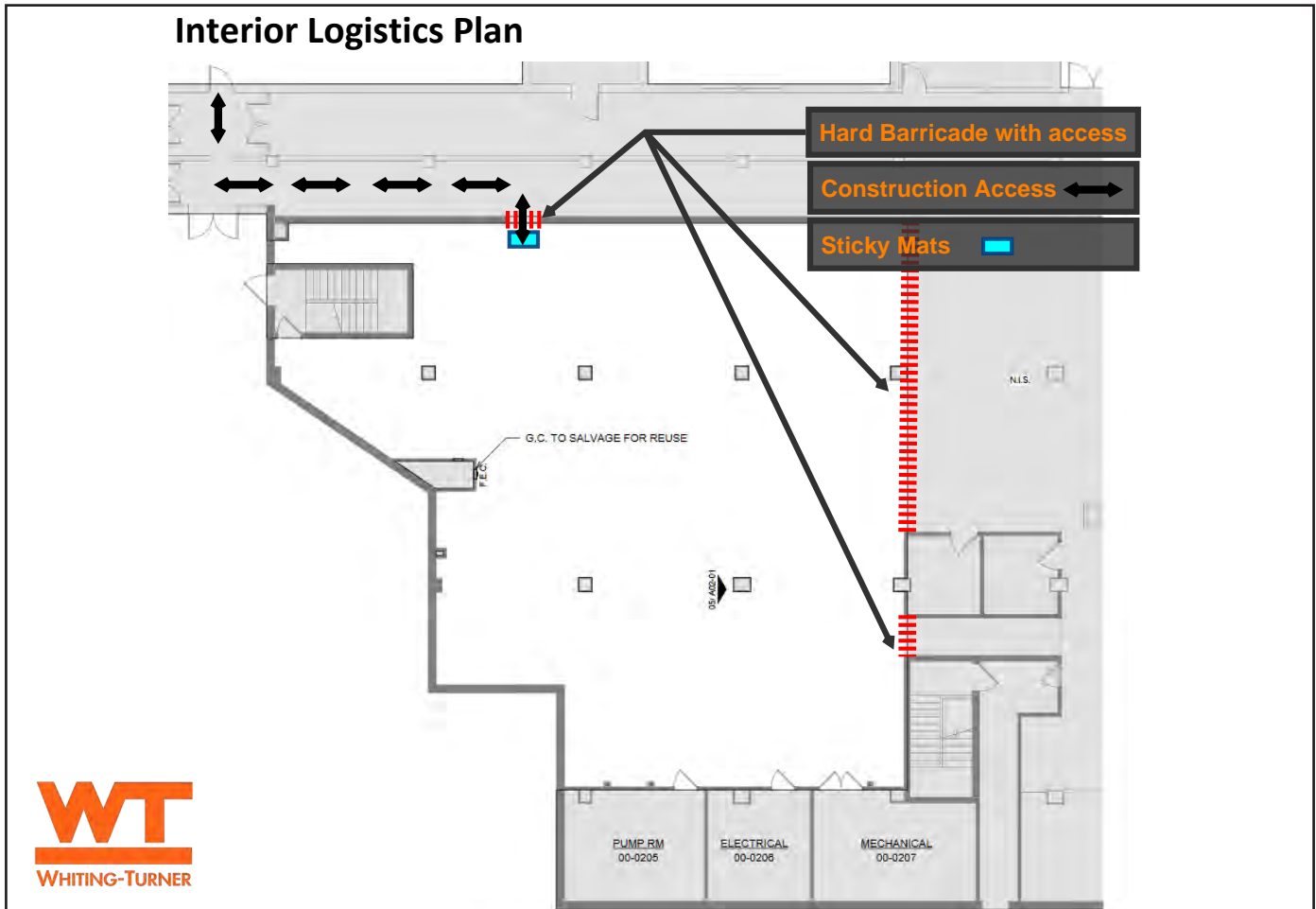
this, Whiting-Turner proposes to use the service area northwest of the tunnel corridor entrance for staging and the primary entry and egress point for the project. From this point, the tunnel corridor would be used to access the site.

Whiting-Turner understands the complexity of maintaining a safe construction site, clear communication, and the need for isolating the construction zone from public access areas. We have established a plan that will create a swift transition into construction, with a focus on safety, schedule, and logistics.

To achieve this, the new opening (0219) would be created early in the project and temporary barricades would be installed at this opening and

Exterior Logistics Plan





at the corridor plant north of Stair 17. Although a barricade and door would be installed in the corridor north of Stair 17, it would only be utilized for isolated events.

Prior to the commencement of construction and after Whiting-Turner takes possession of the project site, the work areas will be identified as a "Controlled Access Area" and will be sealed and isolated from the adjacent spaces. This isolation will allow the pressure in the work area to be decreased to a point lower than the adjacent spaces, thus creating a negative space and helping to control the migration of dust and debris.

When work impacting adjacent areas is scheduled, such as the installation of opening 0219, Whiting-Turner will install temporary dust protection curtains and utilize walk off mats. Maintenance of the negative air machines,

associated ductwork, dust curtains and mats will be continuously monitored by the Whiting-Turner staff.

Additionally, Whiting-Turner will utilize dust control measures such as sticky mats, boot and wheel covers and dust curtains for the duration of the project.

Much of the success Whiting-Turner has realized in similar projects can be **attributed to the communication we have had with project stakeholders**. Like those projects, frequent communication with JPS construction personnel and the appropriate staff members will be critical to the success of this project. **Whiting-Turner personnel Brandon Keck and Luke Wilson** will remain accessible to JPS full-time, and will provide updates regarding phasing, schedule and sequence of major construction activities, deliveries, and necessary utility tie-ins.

SAFETY

Safety is the responsibility of every Whiting-Turner employee. Our project teams develop, lead, and nurture a culture of safety that permeates the site.

The goal of each team is to provide a safe and productive jobsite and send every worker home safely each day.

When Environmental Health & Safety (EH&S) is ingrained in a project's culture, and the team continuously enforces EH&S expectations, projects achieve exceptional EH&S performance. Our project team will provide strong guidance to the inexperienced while still challenging experienced tradesmen and women to continuously develop safe practices for the benefit of the entire project. Our proposed team members have outstanding safety records.

TARGET ZERO

Our project teams leverage an internally developed mobile app [Target Zero] which connects incidents, violations, observations, and recognitions to subcontractor labor data.

An injury-free workplace cannot be guaranteed, but Whiting-Turner gives our field teams the proper toolbox to target a zero-incident culture by turning hindsight into foresight using best-in-class safety analytics.

JOBSITE SECURITY

The project will be secured through the implementation of connex storage containers. These containers will be locked and monitored by Whiting-Turner personnel. At the end of each workday, Whiting-Turner personnel will verify that all containers are secured.

SIGNAGE

The security of the project will be established through the installation of signs at all entry points into the site indicating that it is a construction area, and that unauthorized entry is not permitted.

Other signage such as "hardhats required," "keep out" and "danger" will be posted in strategic locations on both the project barricade, as well as access points.

POLICING

The security of the site will be further enhanced by partnering with the local Police Department. If needed, additional measures might be implemented to include periodic police patrolling, lighting, etc. We will make sure the public is kept safe and the project is kept secure.

EXPERIENCE MODIFICATION RATE (EMR)

Respondent to include in this section the past five (5) years Workers' Compensation Experience Modification Rate (EMR) obtained from your Insurance Agent.

2020	2019	2018	2017	2016
0.49	0.44	0.44	0.43	0.49



CONSTRUCTION COST
& SCHEDULE

6

Section Six



POB II - 4TH & 8TH FLOORS

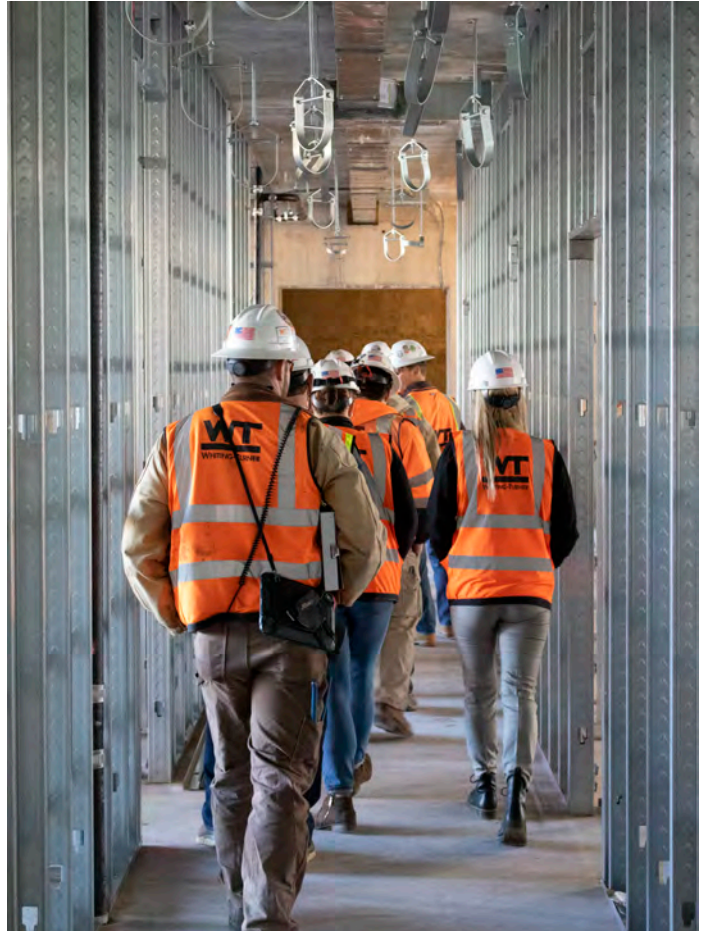
SCHEDULE & COST

The overall duration of the Space Consolidation - GNO project, from Mobilization to Substantial Completion is 110 calendar days. This overall duration consists of a preconstruction phase of 10 calendar days and actual construction duration of 100 calendar days.

As noted, we have assumed a preconstruction duration of 10 calendar days. Activities during this phase include project buyout, contracting, and submittals, plan review and permitting, and procurement of long lead items. If the procurement of long lead items is shorter than anticipated, there is a potential to expedite the preconstruction phase.

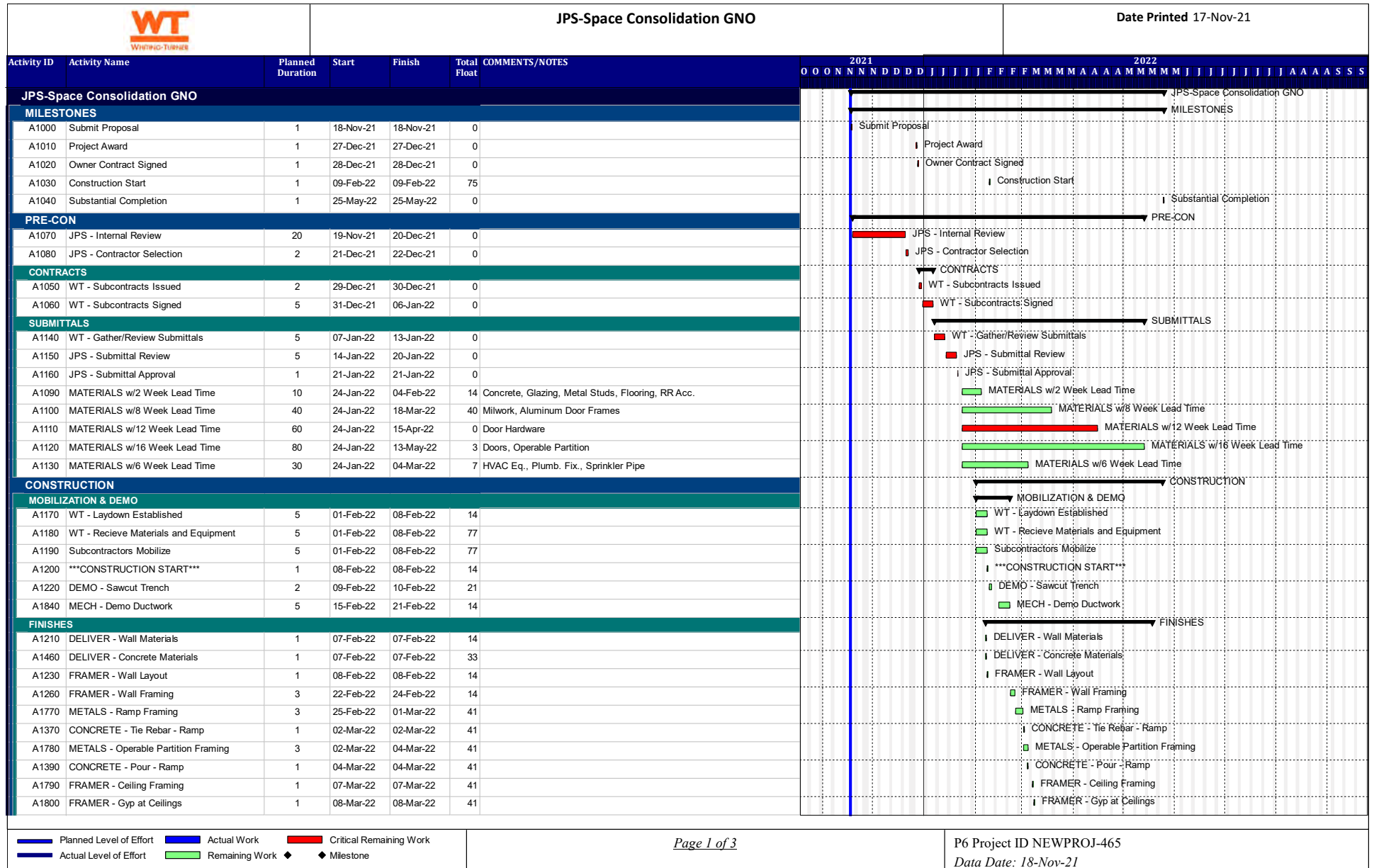
The construction phase is based on a sequence whereby a construction area is completely renovated and turned over prior to advancing to the next area.

The schedule included in this RFP response was created with Primavera, a scheduling software that is highly effective in developing and maintaining the project schedule. The Whiting-Turner project team, with support from our in-house Scheduling Support Group, will manage and update the schedule for the duration of the Space Consolidation - GNO project.



SCHEDULE 1/3

SECTION SIX | CONSTRUCTION SCHEDULE AND CONSTRUCTION COSTS



SCHEDULE 2/3

						JPS-Space Consolidation GNO	Date Printed 17-Nov-21
Activity ID	Activity Name	Planned Duration	Start	Finish	Total Float	COMMENTS/NOTES	
A1360	CONCRETE - Tie Rebar - Trench	1	16-Mar-22	16-Mar-22	7		
A1380	CONCRETE - Pour - Trench	1	18-Mar-22	18-Mar-22	7		
A1420	FRAMER - Close Walls	2	21-Mar-22	22-Mar-22	7		
A1690	DELIVER - Door Frames	1	21-Mar-22	21-Mar-22	40	VERIFY TYPES	
A1710	DELIVER - Milwork	1	21-Mar-22	21-Mar-22	43		
A1730	FRAMER - Set Door Frames	1	22-Mar-22	22-Mar-22	40		
A1750	MILWORK - Set Cabinets	1	22-Mar-22	22-Mar-22	43		
A1430	PAINTER - Tape, Bed, Paint	10	23-Mar-22	05-Apr-22	7		
A1760	MILWORK - Set Counters & Backsplash	1	23-Mar-22	23-Mar-22	43		
A1820	FLOORING - Ceramic Tile Installation	2	23-Mar-22	24-Mar-22	31		
A1810	SPECIALTIES - RR Acc Installation	1	25-Mar-22	25-Mar-22	41		
A1640	FRAMER - Ceiling Grid	2	06-Apr-22	07-Apr-22	7		
A1660	FLOORING - Floor Prep	1	03-May-22	03-May-22	0		
A1670	FLOORING - Floor Installation	3	04-May-22	06-May-22	0		
A1680	FLOORING - Wall Base	1	09-May-22	09-May-22	12		
A1740	FRAMER - Swing Doors	3	09-May-22	11-May-22	7		
A1650	FRAMER - Ceiling Tile	2	11-May-22	12-May-22	1		
A1700	DELIVER - Doors	1	16-May-22	16-May-22	7		
A1720	DELIVER - Operable Partition	1	16-May-22	16-May-22	3		
A1890	HUFFCOR - Install Operable Partition	2	17-May-22	18-May-22	3		
MEP							
A1470	DELIVER - Plumbing Fixtures	1	07-Feb-22	07-Feb-22	70		
A1240	PLUMBER - Trench Layout	1	08-Feb-22	08-Feb-22	21		
A1630	PLUMBER - Set Fixtures & Trim out	5	08-Feb-22	14-Feb-22	70		
A1830	MECH - Air Balance - INITIAL	5	08-Feb-22	14-Feb-22	14		
A1410	ELEC - In-wall Rough	10	22-Feb-22	07-Mar-22	14		
A1400	PLUMBER - In-wall Plumbing	2	25-Feb-22	28-Feb-22	19		
A1440	PLUMBER - Above Ceiling Plumbing	5	01-Mar-22	07-Mar-22	41		
A1480	DELIVER - Plumbing Pipe	1	07-Mar-22	07-Mar-22	7		
A1510	DELIVER - Sprinkler Pipe	1	07-Mar-22	07-Mar-22	23		
A1520	DELIVER - HVAC Equipment	1	07-Mar-22	07-Mar-22	26		
A1250	PLUMBER - Underground Plumbing	5	08-Mar-22	14-Mar-22	7		
A1450	ELEC - Above Ceiling Rough	10	08-Mar-22	21-Mar-22	31		
A1530	MECH - Install Equipment	5	08-Mar-22	14-Mar-22	26		
A1540	MECH - Hang Ductwork	5	08-Mar-22	14-Mar-22	37		
A1850	FIRE PRO - Install Sprinkler Systems	5	08-Mar-22	14-Mar-22	23		
A1570	MECH - Controls	5	15-Mar-22	21-Mar-22	41		
A1600	ELEC - Power for HVAC	10	15-Mar-22	28-Mar-22	26		
A1870	FIRE PRO - Alarm Rough in	5	15-Mar-22	21-Mar-22	37		
A1560	MECH - Install Drops & Diffusers	5	08-Apr-22	14-Apr-22	12		

- Planned Level of Effort
- Actual Work
- Critical Remaining Work
- Actual Level of Effort
- Remaining Work
- Milestone

Page 2 of 3

P6 Project ID NEWPROJ-465
Data Date: 18-Nov-21

SCHEDULE 3/3

						JPS-Space Consolidation GNO	Date Printed 17-Nov-21
Activity ID	Activity Name	Planned Duration	Start	Finish	Total Float	COMMENTS/NOTES	
A1490	DELIVER - Light Fixtures	1	18-Apr-22	18-Apr-22	0		
A1500	DELIVER - Electrical Gear	1	18-Apr-22	18-Apr-22	14		
A1590	ELEC - Set Fixtures	10	19-Apr-22	02-May-22	0		
A1610	ELEC - Set & Terminate Gear	10	19-Apr-22	02-May-22	14		
A1550	MECH - Insulate Ductwork	5	04-May-22	10-May-22	1		
A1620	ELEC - Trim out Devices	10	09-May-22	20-May-22	0		
A1580	MECH - Air Balance - FINAL	5	13-May-22	19-May-22	3		
A1860	FIRE PRO - Sprinkler Trim out	5	13-May-22	19-May-22	1		
A1880	FIRE PRO - Alarm Trim out	5	13-May-22	19-May-22	1		
CLOSE OUT & INSPECTIONS							
A1290	City of FTW - Ramp Rebar Inspection	1	03-Mar-22	03-Mar-22	41		
A1300	City of FTW - In-wall MEP Inspection	1	08-Mar-22	08-Mar-22	14		
A1310	City of FTW - Framing Inspection	1	09-Mar-22	09-Mar-22	14		
A1270	City of FTW - Underground Inspection	1	15-Mar-22	15-Mar-22	7		
A1330	City of FTW - HYDRO Inspection	1	15-Mar-22	15-Mar-22	41		
A1280	City of FTW - Trench Rebar Inspection	1	17-Mar-22	17-Mar-22	7		
A1320	City of FTW - Above Ceiling MEP Inspection	1	03-May-22	03-May-22	1		
A1340	City of FTW - Fire Final Inspection	1	23-May-22	23-May-22	0		
A1350	City of FTW - Occupancy Inspection	1	24-May-22	24-May-22	0		

■ Planned Level of Effort ■ Actual Work ■ Critical Remaining Work

▬ Actual Level of Effort ▬ Remaining Work ♦ Milestone

Page 3 of 3

P6 Project ID NEWPROJ-465
Data Date: 18-Nov-21

RFP FOR CONSTRUCTION SERVICES FOR THE Space Consolidation - GNO
--

**EXHIBIT “D”
BID FORM**

Pricing Form for Cost of the Work Plus a Fee with a Guaranteed Maximum Price

FOR: **Space Consolidation - GNO**
 JPS HEALTH NETWORK
 1500 South Main St
 Fort Worth TX 76104

TO: Zach Miler
 JPS Design and Construction
 1500 S. Main St.
 Ft. Worth, Texas 76104

PROPOSAL FROM:

The Whiting-Turner Contracting Company

(Name of Respondent)

301 S. Henderson Street

(Address)

Fort Worth	TX	76104
<i>(City)</i>	<i>(State)</i>	<i>(Zip Code)</i>

(817) 725-7700

(Telephone Number)

11/18/2021

(Date Proposal Submitted)

Pursuant to the Instruction to Respondents, the undersigned has thoroughly examined the RFP Documents and the Site, understands the work to be done, and hereby proposes to do all the work as provided in the RFP Documents and subject to the observation and approval of the Architect and binds themselves on acceptance of this Proposal by the Owner for performing and completing the said work within the time stated and to furnish all required guarantees for the following cost plus a fee with a guaranteed maximum price:

RFP FOR CONSTRUCTION SERVICES FOR THE Space Consolidation - GNO
--

Cost of the Work:

The Cost of the Work included in the G-Max price is (base Proposal and contingency allowances noted below):

Six Hundred Fifty One Thousand Seven Hundred Six Dollars and NO Cents (\$651,706.00)

Contractor's Fee:

The Contractor's fee shall be:

Forty-Six Thousand Seven Hundred Seventy-Seven Dollars and NO Cents (\$46,777.00)

Or

A percentage of the Cost of the Work equal to _____ percent.
(Written in Words)

(The contractor's fee includes all overhead and profit as defined in AIA A102)

Guaranteed Maximum Proposal Amount:

Six Hundred Ninety-Eight Thousand Four Hundred Eighty-Two Dollars and NO Cents (\$698,482.00)

The sum of the **Cost of the Work** and the **Contractor's Fee** is guaranteed by the Contractor not to exceed

Six Hundred Ninety-Eight Thousand Four Hundred Eighty-Two Dollars and NO Cents (\$698,482.00),

subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum will be referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

**RFP FOR CONSTRUCTION SERVICES
FOR THE Space Consolidation - GNO****ALLOWANCES:** *(If Applicable)*

Contingency Allowance No.1 \$ 80,000 Owner Controlled Contingency _____

Contingency Allowance No.2 _____

Contingency Allowance No.3 _____

RFP FOR CONSTRUCTION SERVICES FOR THE Space Consolidation - GNO
--

The undersigned Respondent further agrees that if any or all of the following Alternates as described in the RFP Documents are accepted, the following amounts shall be added to or subtracted from the Base Proposal: *(If Applicable)*

Alternate No. 1: (Item Description)

_____ Dollars and _____ Cents (\$ _____)

Alternate No. 2: (Item Description)

_____ Dollars and _____ Cents (\$ _____)

Alternate No. 3: (Item Description)

_____ Dollars and _____ Cents (\$ _____)

ADDENDA:

Respondent acknowledges that it is Respondent's responsibility to ascertain whether any Addenda have been issued. Respondent therefore agrees to be bound by all Addenda that have been issued for this Proposal.

Check to acknowledge receipt of the following addenda which are part of the RFP Documents: *(If Applicable)*

Addendum No.1 _____ Addendum No. 2 _____

Addendum No.3 _____ Addendum No. 4 _____

CONTRACT TIME:

CALENDAR DAYS TO COMPLETE WORK: :110

**RFP FOR CONSTRUCTION SERVICES
FOR THE Space Consolidation - GNO**

COST BREAKDOWN: The Guaranteed Maximum Price stated above is detailed as follows:
(If Division is not Applicable noted with “N/A”)

DIVISION	DIVISION DESCRIPTION	COST
CONTRACTOR'S FEE		\$53,973.00
BONDING COST		\$3,790.00
DEMOLITION		0
ALLOWANCES		\$92,310.00
PERMIT FEES		\$2,570.00
01 00 00	General Requirements	\$6,110.00
02 00 00	Existing Conditions	\$13,850.00
03 00 00	Concrete	\$10,960.00
04 00 00	Masonry	0
05 00 00	Metals	\$5,290.00
06 00 00	Wood, Plastics and Composites	\$17,510.00
07 00 00	Thermal and Moisture Protection	0
08 00 00	Openings	\$23,350.00
09 00 00	Finishes	\$135,690.00
10 00 00	Specialties	\$48,230.00
11 00 00	Equipment	0
12 00 00	Furnishings	\$660.00
13 00 00	Special Construction	0
14 00 00	Conveying Equipment	0
21 00 00	Fire Suppression	\$18,810.00
22 00 00	Plumbing	\$81,000.00
23 00 00	HVAC	\$87,800.00
25 00 00	Integrated Automation	0
26 00 00	Electrical	\$94,040.00
27 00 00	Communications	0
28 00 00	Electronic Safety and Security	\$2,540.00
31 00 00	Earthwork	0
32 00 00	Exterior Improvements	0
33 00 00	Utilities	0
48 00 00	Electrical Power Generation	0
Guaranteed Maximum Price:		\$698,482.00

NOTE: Column must add up to the Guaranteed Maximum Price Shown Above.

The Respondent agrees that this Proposal may not be revoked or withdrawn for a period of ninety (90) days after the date and time of Proposal opening, but shall remain open for acceptance for a period of ninety (90) days following Proposal opening.

**RFP FOR CONSTRUCTION SERVICES
FOR THE Space Consolidation - GNO**

The Respondent agrees that this Proposal may not be revoked or withdrawn for a period of ninety (90) days after the date and time of Proposal opening, but shall remain open for acceptance for a period of ninety (90) days following Proposal opening.

The undersigned Respondent is duly organized and existing as a:

☐ Sole Proprietorship; ☐ MBE

☐ Partnership; ☐ WBE

☒ Corporation; or ☐ DOBE

☐ Limited Liability Company ☐ VBE

☐ Other legal entity (specify, i.e. Joint Venture) _____

(Attach Joint Venture Certification form if this type of organization is responding to the RFP)

The Respondent's Federal I.D. number, or Social Security number if the Respondent is a Sole Proprietor, is: 52-0529450.

Note: All portions of this Bid Form must be completed and the Bid Form must be signed before the Proposal is submitted. Failure to do so could result in the Proposal being rejected as non-responsive.

RFP FOR CONSTRUCTION SERVICES FOR THE Space Consolidation - GNO
--

RESPECTFULLY SUBMITTED,

(Corporations only this column)

(Respondents other than Corporations))

The Whiting-Turner Contracting Company

(Legal Name of Corporation)

(Legal Name of Respondent Firm)

Maryland

(State of Incorporation)

(State Registered if Applicable)

Michael Kersey

DocuSigned by: ne of Officer)

(Type/Print Name of Officer)



 E9E9688F78CD4C3

(Signature of Officer)

(Signature of Officer)

Division Vice President

(Title of Officer)

(Title of Officer)

11/18/2021

(Date)

(Date)

(INCLUDE SEAL OF CORPORATION)

WITNESS:

(Name of Witness Typed/Printed)

(Signature of Witness)

(Address of Witness)

(Date)

(Signature of Respondent, including Corporation Officer, must be witnessed and dated to be valid.)

[End of Exhibit "D". Balance of page left blank intentionally.]



SIGNATURE FORM



**RFP FOR CONSTRUCTION SERVICES
FOR THE Space Consolidation - GNO**

Exhibit “I” Proposal Signature Form

Respondent shall signify Respondent’s acceptance of and compliance with the requirements, terms, and conditions of this **RFP NO. 19-1011 for Construction Services for the Space Consolidation – GNO project** by signing in the signature space set forth below.

Respondent warrants that Respondent has examined and is familiar with this RFP and its terms and conditions.

Respondent warrants that it has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily finance and complete the products and services in its Proposal.

Respondent certifies that the individual signing this Proposal in response to this RFP is authorized to sign such documents on behalf of the Respondent entity and to bind Respondent and is authorized to bind the Respondent in this Proposal.

RESPONDENT AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE DISTRICT AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, ARISING OUT OF CONNECTED WITH, OR RESULTING FROM ANY ACTS OF OMISSIONS OF RESPONDENT OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF RESPONDENT IN THE EXECUTION OR PERFORMANCE OF ANY AGREEMENTS OR OTHER CONTRACTUAL ARRANGEMENTS WHICH MAY RESULT FROM THE SUBMISSION OF THE PROPOSAL IN RESPONSE TO THIS RFP AND/OR THE AWARD OF A CONTRACT THEREON BY THE DISTRICT.

RFP NO. 19-1011 for Construction Services
for the Space Consolidation – GNO project

RESPONDENT (COMPANY) NAME: The Whiting-Turner Contracting Company

DocuSigned by:

By: Michael Kersey
E9E9688F78C04C3

Printed Name: Michael Kersey

Date: 11/18/2021

Title: Division Vice President

Telephone: (817) 725-7700

Email: Micahel.kersey@whiting-turner.com



Scan to visit



www.whiting-turner.com

Brent Schoolfield Senior Project Manager 817-725-7700 brent.schoolfield@whiting-turner.com	The Whiting-Turner Contracting Company 301 S. Henderson Street Fort Worth, TX 76104
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