

# EXHIBIT "A"

Supplementary Conditions to the AIA  
Documents A201-1997 General  
Conditions of the Contract for  
Construction

**SUPPLEMENTARY CONDITIONS  
TO THE GENERAL CONDITIONS OF CONTRACT  
FOR CONSTRUCTION  
Courthouse Renovation Project**

The Supplementary Conditions contain modifications and additions to the General Conditions of the Contract for Construction, AIA Document A201, 1997 Edition. Where any part of the AIA General Conditions is modified or voided by the Supplementary Conditions, the unaltered portions shall remain in effect. The paragraph numbering system of AIA Document A-201, 1997 Edition, is continued in the Supplementary Conditions.

1.1.1. In line 6, after "ARCHITECT" add "pursuant to Paragraph 7.4."

1.1.2 After 1.1.1 add:

"1.1.1.1 CONTRACTOR acknowledges and warrants that it has closely examined all the Contract Documents, that they are suitable and sufficient to enable CONTRACTOR to complete the WORK in a timely manner for the Contract sum, and that they include all WORK, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the WORK in full compliance with all applicable codes, laws, ordinances, and regulations."

1.1.2 In line 5, after "Subcontractor" add "(except as provided in Paragraphs 5.3 and 5.4 hereof)".  
In line 7, after "obligations" add "of CONTRACTOR".

After 1.1.3 add:

"1.1.3.1 The WORK shall include the obligation of CONTRACTOR to visit the site of the project before submitting a proposal. Such site visit shall be for the purpose of familiarizing CONTRACTOR with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas."

1.1.5 At the end add, "wherever located and whenever issued."

1.1.7 In line 1, after "which" omit "may" and add "is issued by ARCHITECT and shall".

After 1.1.7 add:

"1.1.8 ADDENDUM: A change to Contract Documents issued by ARCHITECT which is subject to OWNER's approval prior to the execution of the Agreement and specifically listed in the Agreement."

**"1.1.9 ALTERNATE:** A variation in Contract requirements on which a separate price is to be received by OWNER as a part of the bid. If the Alternate is accepted in writing by OWNER, the variation is then a part of the Contract and the amount of money quoted to be added or deducted from the Base Bid is taken into account in determining the Contract Sum.

**"1.1.10 BASE BID:** the bids before any Alternates are considered.

**"1.1.11 FINAL COMPLETION:** Final Completion is achieved at the time that final inspection has been performed by ARCHITECT and the final Certificate for Payment is issued by ARCHITECT and approved by OWNER.

**"1.1.12 NOT-IN-CONTRACT - N.I.C:** WORK not included in the Contract.

**"1.1.13 OR APPROVED EQUAL AND EQUAL TO:** Shall mean products by manufacturers other than those specified in the Contract documents which CONTRACTOR may submit for substitution and prove to be equal to those specified in the Contract Documents and which may be incorporated in the WORK after review and acceptance by ARCHITECT and acceptance by OWNER.

**"1.1.14 INDICATED AND SHOWN:** Shall mean as detailed, scheduled, or called for in the Contract Documents.

**"1.1.15 KNOWLEDGE:** The terms 'knowledge', 'recognize' and 'discover,' their respective derivatives, and similar terms in the Contract Documents, as used in reference to CONTRACTOR, shall be interpreted to mean that which CONTRACTOR knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression 'reasonably inferable' and similar terms in the Contract Documents shall be interpreted to mean reasonable inferable by a contractor in Hidalgo County familiar with the Project and exercising the care, skill, and diligence required of CONTRACTOR by the Contract Documents."

**1.1.1.6 DAYS:** The term 'days' in the Contract documents means calendar days."

**1.2.1** Delete in its entirety and substitute the following:

**"The Contract Documents include all items necessary for the proper execution and completion of the WORK by CONTRACTOR. The WORK shall consist of all items specifically included in the Contract Documents as well as all additional items of WORK that are reasonably inferable from that which is specified in order to complete the WORK in accordance with the Contract Documents and in order to produce the**

intended result. The Contract Documents are complementary, and what is required by any one Contract Document shall be as binding as if required by all. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves have been referred to OWNER and ARCHITECT by CONTRACTOR prior to the submission of bids and have been clarified by a Addendum issued to all bidders.

"If any such differences or conflicts were not called to OWNER's and ARCHITECT's attentions prior to submission of bids, ARCHITECT shall decide which of the conflicting requirements will govern based upon the most stringent of the requirements; will take precedence over the less specific; the more stringent will take precedence over the less stringent; the more expensive item will take precedence over the less expensive, and subject to the approval of OWNER, CONTRACTOR shall perform the WORK at no additional cost and/or time to OWNER in accordance with ARCHITECT's decision. WORK not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results."

1.2.3 In line 1, after "words" add "and abbreviations".

After 1.2.3 add:

"1.2.4 If WORK is required in a manner to make it impossible to produce WORK of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, CONTRACTOR shall request in writing an interpretation from ARCHITECT before proceeding with the WORK. If CONTRACTOR fails to make such request, no excuse will thereafter be entertained for the failure to carry out WORK in the required manner or provide required guarantees, warranties, or bonds, and CONTRACTOR shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure."

1.5.1 In line 2, delete "upon request".

1.5.2 Delete in its entirety and substitute the following:

"1.5.2.1 Execution of the Contract by CONTRACTOR is a representation that said Contract Documents are full and complete, are sufficient to have enabled CONTRACTOR to determine the cost of the WORK therein to enter into the Contract and that the Contract Documents are sufficient to enable it to construct the WORK outlined therein, and otherwise to fulfill all its obligations hereunder, including, but not limited to CONTRACTOR's obligation to construct the WORK for an amount not in excess of the Contract Sum on or before the date(s) of Substantial Completion established in the Agreement. CONTRACTOR further acknowledges and declares that it has visited and examined the site, examined all physical, legal, and

other conditions affecting the WORK and is fully familiar with all of the conditions thereon and thereunder affecting the same. In connection therewith, CONTRACTOR specifically represents and warrants to OWNER that it has, by careful examination, satisfied itself as to (1) the nature, location, and character of the Project and the site, including, without limitation, the surface and subsurface conditions of the site and all structures and obstructions thereon and thereunder, 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 the manner and within the cost and time frame required by the Contract Documents.

1.5.2.2 In connection with the foregoing and having carefully examined all Contract Documents, as aforesaid, and having visited the site, CONTRACTOR acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify OWNER and ARCHITECT of such fact.

"1.5.2.3 Further, CONTRACTOR recognizes the extra degree of care required under the urban site construction circumstances with respect to safety, protection of pedestrians, cleanliness of the site, health and other laws, and protection of existing utilities, adjacent streets, and property. In arriving at the Contract Sum and the Contract Time, CONTRACTOR has, as an experienced and prudent CONTRACTOR, exercised its best judgment and expertise to include the impact of such circumstances upon the Contract Sum and the Contract Time."

1.6.1 Delete the first two grammatical sentences and substitute, "The Drawings, Specifications, and other similar or related documents and copies thereof are furnished to CONTRACTOR for the purpose of performing the WORK and are, and shall remain, the property of OWNER "In line 4, after Specifications" delete the remainder of the grammatical sentence and the next grammatical sentence and substitute "and other similar or related documents, and OWNER shall retain all common law, statutory, and other reserved rights, in addition to the copyright (including, without limitations, the right to create derivative works therefrom). All copies of such documents shall be returned to OWNER upon Completion of the WORK." In line 14, delete "and other documents prepared by ARCHITECT" and substitute "and other similar or related documents". In line 15, delete "ARCHITECT and the ARCHITECT's consultants". Delete the last two grammatical sentences.

2.1.1 Paragraph 2.1.1 of the General Conditions shall be amended by deleting the existing Paragraph 2.1.1 and replacing it with the following paragraph:

The Owner is the person or entity identified as such in the Agreement and is referred to

throughout the Contract Documents as if singular in number. The Commissioners Court of Owner, by majority vote, is the only representative of the Owner, having the power to enter into a Contract, to execute a change order requiring an increase in the Contract Sum, or agree to an extension of the contractual completion date. The Commissioners Court shall designate, as appropriate, an authorized representative or representatives to act on its behalf during the course of construction. In the event that emergency changes in the scope of the work are required before the Commissioner's Court next regular meeting or in order to facilitate and expedite the timely completion of the work, the Commissioners Court's authorized representatives may approve construction changes that do not exceed \$5,000.00 in increased costs. Any such change shall be confirmed in writing between the Contractor and the Commissioner Court's authorized representatives and notice of such approved changes shall be given to the Commissioners Court at its next regular meeting. The Commissioners Court will act as soon as reasonably possible to avoid undue delays in the construction completion date.

2.2.3, line 1, after "characteristics" add "and" and delete "any utility locations." At the end, add:

"In connection with the foregoing, CONTRACTOR shall be solely responsible for locating (and shall locate prior to performing any WORK) all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including without limitation, all buried pipelines and buried telephone cables and shall perform the WORK in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines."

2.2.3 Delete in its entirety and substitute "OWNER shall furnish CONTRACTOR with one set of reproducible Drawings and one Project Manual. CONTRACTOR is given permission to make copies of these documents for use on this Project. All costs of reproduction are the responsibility of CONTRACTOR."

2.3.1 In line 2 delete "persistently", and in line 3 after "Documents" add "; or fails to remove and discharge (within ten (10) days) any lien filed upon OWNER's or Landlord's property by anyone claiming by, through, or under CONTRACTOR; or disregards the instructions of ARCHITECT or OWNER when based on the requirements of the Contract Documents". In line 5 after "entity," delete the remainder of the grammatical sentence and add ", and any delay resulting from such WORK stoppage shall not extend any Milestone Date identified in the Contract for Construction or the required dates of Substantial or Final Completion".

2.4.1 In line 3, after "promptness" add "or fails within such seven-day period to eliminate (or diligently commence to eliminate) the cause of any stop WORK order issued under Subparagraph 2.3.1 hereof," and delete "OWNER may after such seven-day period give CONTRACTOR a second written notice to correct such deficiencies within a three-day period. If CONTRACTOR within such second three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies." Delete the fourth grammatical sentence (beginning with "Such action by the OWNER") in its entirety. Add before the last grammatical sentence "Such Change Order shall be deemed to have been executed by CONTRACTOR, whether or not actually signed by CONTRACTOR, unless the

Change Order is shown to have been prepared in bad faith by OWNER and ARCHITECT”.

After 2.4.1 add:

“2.5.1 The rights stated in Article 2 shall be in addition and not in limitation of any other rights of OWNER granted in the Contract Documents or at law or in equity.”

3.2.1 In line 7, after the first “ARCHITECT” add “and OWNER” and after “for” add “design”.

3.2.2 In line 1, after “promptly” add “in written notices”.

After 3.2.2 add:

“3.2.2.1 Should any words or numbers that are necessary to a clear understanding of the WORK be illegible or omitted, or should an error, or discrepancy occur in any of the Contract Documents, CONTRACTOR shall immediately notify in writing ARCHITECT and OWNER of such omission, error, or discrepancy, and CONTRACTOR shall not proceed with that portion of the WORK until clarification is received. If CONTRACTOR proceeds without so notifying ARCHITECT, CONTRACTOR shall be responsible for the cost of correcting same, including any resulting damage.”

3.3.1 Delete the last grammatical sentence.

After 3.3.3 add:

“3.3.4 CONTRACTOR shall be responsible to OWNER for acts and omissions of CONTRACTOR's employees, Subcontractors and their agents and employees, and other persons performing portions of the WORK under contract or other arrangements with CONTRACTOR.

“3.3.5 CONTRACTOR shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the WORK, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. CONTRACTOR shall promptly remedy damage and loss to property at the site caused in whole or in part by CONTRACTOR, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of OWNER or ARCHITECT or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of CONTRACTOR, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of CONTRACTOR are in addition to CONTRACTOR's obligations under other provisions hereunder.

**"3.3.6 CONTRACTOR shall be responsible for inspection of portion of WORK already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent WORK.**

**"3.3.7 CONTRACTOR has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions, and that they provide materials on time. CONTRACTOR shall coordinate its WORK with that of all others on the Project, including of construction utilities.**

**3.3.8 CONTRACTOR shall establish and maintain bench marks and all other grades, lines, and levels necessary for the WORK; report errors or inconsistencies to OWNER and ARCHITECT before commencing WORK; and, if applicable, review the placement of the buildings and permanent facilities on the site with OWNER and ARCHITECT after all lines are staked out and before foundation WORK is started. CONTRACTOR shall provide access to the WORK for OWNER, ARCHITECT, other persons designated by OWNER, and governmental inspectors. Any encroachments made by CONTRACTOR or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments arising from errors or omissions not reasonably discoverable by CONTRACTOR in the Contract Documents, shall be the sole responsibility of CONTRACTOR, and CONTRACTOR shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at CONTRACTOR's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property OWNER(s) (in form and substance satisfactory to OWNER in its sole discretion) allowing the encroachments to remain.**

**"3.3.9 CONTRACTOR shall verify at the WORK site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the WORK and be responsible for their accuracy and proper correlation with control lines, monuments, and data, as established by surveys furnished by OWNER. WORK shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent WORK, CONTRACTOR shall measure all WORK already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to ARCHITECT and OWNER any discrepancy between said WORK and the Drawings and Specifications for the WORK.**

**"3.3.10 Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous WORK which may prevent accurate layout or construction of the WORK, shall immediately be reported by CONTRACTOR to OWNER and ARCHITECT. If CONTRACTOR performs,**

permits, or causes performance of any WORK when CONTRACTOR knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from ARCHITECT or OWNER. CONTRACTOR shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the misdescription of details of WORK which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve CONTRACTOR from performing such omitted or misdescribed details of the WORK, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to OWNER.

"3.3.11 CONTRACTOR shall engage workers who are skilled in performing the WORK, and all WORK shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. CONTRACTOR shall be liable for all property damage, including repairs and replacements of the WORK and economic losses, which proximately result from the breach of this duty. CONTRACTOR shall advise ARCHITECT:

- 1) if a specified product deviates from good construction practices;
- 2) if following the Specifications will affect any warranties; or
- 3) any objections which CONTRACTOR may have to the Specifications.

Nothing contained in Subparagraph 1.1.3 shall alter the responsibilities established in this Subparagraph."

3.4.2 At the end add:

"By making requests for substitutions based on Subparagraph 3.4.2, CONTRACTOR:

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

3.4.3 At the end add:

"CONTRACTOR shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgments as an experienced CONTRACTOR to adopt and implement policies and practices designed to avoid WORK stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Subparagraph 8.3.1 hereof, CONTRACTOR shall be liable to OWNER for all damages suffered by OWNER occurring as a result of WORK stoppages, slowdowns, disputes, or strikes.

"3.4.4 Materials shall conform to manufacturer's standards in effect at the date of execution of the Agreement and shall be installed in strict accordance with manufacturer's directions. CONTRACTOR shall, if required by OWNER or ARCHITECT, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

"3.4.5 When the Contract Documents require the WORK, or any part of same, to be above the standards required by applicable laws, ordinances, rules, and regulations, and other statutory provisions pertaining to the WORK, such WORK shall be performed and completed by CONTRACTOR in accordance with the Contract Documents.

"3.4.6 When the manufacturer's name, patent numbers, underwriter's labels, model numbers, or similar identifying marks are required, such markings shall be located as inconspicuously as possible."

3.5.1 In line 2, delete "of good" and substitute "the best quality in accordance with the Specifications" and after "from" add "faults and". In line 3, delete "not inherent in the quality required or permitted". Delete the third grammatical sentence in its entirety. In line 7, after "by the" add "OWNER or".

After 3.5.1 add:

"3.5.2 ALL WARRANTIES SHALL INCLUDE LABOR AND MATERIALS AND THE MANUFACTURER'S WARRANTY SHALL BE SIGNED BY SUBCONTRACTOR AND COUNTERSIGNED BY CONTRACTOR. ALL WARRANTIES SHALL BE ADDRESSED TO OWNER AND DELIVERED TO ARCHITECT UPON COMPLETION OF THE WORK AND BEFORE OR WITH THE SUBMISSION OF REQUEST FOR FINAL PAYMENT.

"3.5.3 CONTRACTOR shall issue in writing to OWNER as a condition precedent to final payment a 'general warranty' reflecting the terms and conditions of this Paragraph 3.5 for all WORK under the Contract.

"3.5.4 The warranties provided in Paragraph 3.5.1 shall be in addition to and not in limitation of any other warranty or remedy required by la or by the Contract Documents, and such warranty shall be interpreted to require CONTRACTOR to replace defective materials and equipment and re-execute defective WORK which is disclosed to the CONTRACTOR by the OWNER within a period of one (1) year after final completion of the entire WORK unless a longer time is specifically called for in the specifications. The CONTRACTOR shall assign all components, equipment and fixture warranties to the OWNER and will deliver all manuals to the OWNER at the completion of construction.

"3.5.5 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to OWNER."

"3.5.6 Warranties shall become effective on a date established by OWNER and ARCHITECT in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire WORK, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties.

"3.5.7 If ARCHITECT considers it impractical, because of unsuitable test conditions or some other factors, to execute simultaneous final acceptance of all equipment, portions of the installation may be certified by ARCHITECT for final acceptance, subject to OWNER's approval, when that portion of the system is complete and ready for operation as called for under Subparagraph 9.8.1.

"3.5.8 CONTRACTOR shall warrant for a period of twelve (12) months that the building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond CONTRACTOR's control. CONTRACTOR shall, immediately upon notification by OWNER of water penetration, determine the source of water penetration and, at its own expense, do any WORK necessary to make the building(s) watertight. CONTRACTOR shall also, at its own expense, repair or replace any other damaged material, finishes, and furnishings, damaged as a result of this water penetration, to return the building(s) to its (their) original condition.

"3.5.9 In addition to the foregoing stipulations, CONTRACTOR shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

"3.5.10 If for any reason CONTRACTOR cannot warrant any part of the WORK using material or construction methods that have been specified, or shown, it shall

notify OWNER and ARCHITECT in writing before the Contract is signed, giving reasons, together with the name of product and data on a substitution it can warrant.”

3.6.1 In line 2, delete everything after “enacted”.

Paragraph 3.7.1 shall be deleted and replaced with the following paragraphs:

3.7.1 The Contractor shall be responsible for making and submitting application for the building permit. The Contractor shall pay the municipality directly for the building permit and all other development “impact” fees, if any. The Contractor shall continue to be responsible for payment of other permits, governmental fees, licenses, and inspections and other consents for general construction including, without limitation, street opening, sidewalk, and other obstructions, access over public ways and storage necessary for proper execution of the contract and which are legally required when bids are received.

The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of all permits for the Project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

3.7.2 After “orders” add “and all other requirements”.

3.7.3 In line 1, at the beginning add: “Subject to the other terms and conditions of these Supplementary General Conditions in general and Subparagraphs 1.2.2, 1.2.3, and 3.2.2 in particular,” and replace “It” with “it”. At the end of the first grammatical sentence add “unless such laws, statutes, ordinances, building codes, and rules and regulations bear upon the performance of the Work.”

3.7.4 In line 1, delete “knowing it to” and substitute “(including, without limitation, the installation of any materials or equipment) that it knows or reasonably should have known would”. In line 2, delete “without such notice to the ARCHITECT and OWNER.

3.10.1 In line 2, delete “information” and substitute “review and approval”. In line 3, after “revised” add “as required herein and” and at the end of the subparagraph add: “The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the WORK as well as the totality of the WORK. The schedule shall be updated every thirty (30) days and submitted to ARCHITECT with CONTRACTOR's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original schedule. If any schedule submitted sets such a date for Substantial Completion for the WORK or any phase of the WORK beyond the date(s) of Substantial Completion established in the Contract (as

the same may be extended as provided in the Contract Documents), then CONTRACTOR shall submit to ARCHITECT and OWNER for their review and approval a narrative description of the means and methods that CONTRACTOR intends to employ to expedite the progress of the WORK to ensure timely completion of the various phases of the WORK as well as the totality of the WORK.

To ensure such timely completion, CONTRACTOR shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, CONTRACTOR shall not be entitled to an adjustment in the Contract Sum or the schedule."

3.11.1 In line 2, after "selections" add "(all changes and selections to be approved by OWNER and ARCHITECT in advance).

After 3.11.1 add:

"3.11.2 At the Date of Substantial Completion and as a condition precedent to final payment, CONTRACTOR shall furnish the following documents to ARCHITECT for submittal to OWNER: Record Drawings showing the field changes and selections (all changes and selections to be approved by OWNER and ARCHITECT in advance) affecting the general construction, mechanical, electrical, plumbing, and all other WORK, and indicating the WORK as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of ARCHITECT's Drawings obtained and paid for by CONTRACTOR. CONTRACTOR shall maintain at the job site one (1) set of ARCHITECT's Drawings and indicate thereon each field change as it occurs."

3.12.10 In line 9, after "professional" add "and who shall comply with requirements of OWNER regarding qualifications and insurance."

3.18 Delete and substitute:

**3.18 INDEMNIFICATION**

*"To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless OWNER, the elected officials of Owner, all employees of Owner and agents of any of the above mentioned parties (the "INDEMNIFIED PARTIES") from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty, or cause of action (including attorneys' fees), directly or indirectly arising out of, resulting from, or related to (in whole or in part), (1) the WORK performed hereunder, (2) the Contract, or (3) the act or omission of CONTRACTOR, a Subcontractor, or an individual, partnership, joint venture, or corporation (a) directly or indirectly employed by CONTRACTOR or a Subcontractor, or (b) for whose acts or omissions CONTRACTOR or a Subcontractor may be liable (excluding property damage to the WORK itself, covered by OWNER's all-risk builder's risk insurance, subject to CONTRACTOR's liability for any deductible amounts thereunder). The obligations of CONTRACTOR under this indemnification shall*

*apply to all matters except those arising solely from the wanton and willful negligence or the malicious acts or omissions of OWNER. Further, the obligations of CONTRACTOR under this indemnification shall not extend to the liability of ARCHITECT, its agents, or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, (2) the giving of or failure to give directions or instructions by ARCHITECT, its agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage, or (3) any matter prohibited by Section 130.002, Texas Civil Practice and Remedies Code. CONTRACTOR shall promptly advise OWNER in writing of any action, administrative or legal proceeding, or investigation as to which this indemnification may apply, and CONTRACTOR, at CONTRACTOR's expense, shall assume on behalf of OWNER and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to OWNER; provided, OWNER shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both CONTRACTOR and OWNER and OWNER shall have reasonably concluded that they may be legal defenses available to it that are different from, or additional to, or inconsistent with, those available to it that are different from, or additional to, or inconsistent with, those available to CONTRACTOR. OWNER shall have the right to select separate counsel to participate in the defense of such action on its own behalf at CONTRACTOR's expense. In the event of failure by CONTRACTOR to fully perform in accordance with this indemnification paragraph, OWNER, at its option, and without relieving CONTRACTOR of its obligations hereunder, may so perform, but all costs and expenses so incurred by OWNER in that event shall be reimbursed by CONTRACTOR to OWNER, together with interest on the same from the date any such expense was paid by OWNER until reimbursed by CONTRACTOR, at the rate of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of the Contract is subject. The obligations of CONTRACTOR under this Section shall survive the expiration of the Contract and specifically shall survive the limitations contained in Subsection 4.3.5 hereof."*

4.1.3 In line 1, delete "against whom CONTRACTOR makes no reasonable objection and".

4.2.3 Delete in its entirety and substitute the following:

"ARCHITECT shall not have control over or charge of and shall not be responsible for safety precautions and programs in connection with the WORK. ARCHITECT shall be responsible for promptly notifying CONTRACTOR of the failure of CONTRACTOR, Subcontractors or any other persons performing any of the WORK, in failing to use proper construction means, methods, techniques, sequences, procedures, safety precautions and programs, but only to the extent ARCHITECT becomes aware of, or should, exercising due professional diligence, be aware of, same. ARCHITECT shall also promptly notify OWNER in writing of the failure of

any of the foregoing parties to carry out the WORK in accordance with the Contract Documents."

4.2.6 In line 1, after "authority" add "and the responsibility".

4.2.7 In line 1, after "approve" add "or reject.". In line 2, delete "but only for the limited purpose of checking".

4.2.13 Delete in its entirety

4.3.2 At the end add "Said written notice of claims shall state specifically the reason for the claim, the date or dates of the cause of causes of the claim, and if any extension of time is requested, the number of days of extension requested."

4.3.4 At the end add:

"No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by CONTRACTOR's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that CONTRACTOR had the opportunity to make or should have performed in connection with the Project."

4.3.5 In line 2, after "WORK," add "Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by OWNER and ARCHITECT. No such claim shall be of value unless so made."

4.3.7.2 At the end add:

"Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if ARCHITECT determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied."

4.3.10 Delete in its entirety and add, "CONTRACTOR shall not be entitled to claims for additional time and/or increase in Contract Price due to a problem or non-performance of a subcontractor."

4.4.2 In line 3, after "approve" add "in whole or in part".

Paragraph 4.4.5 shall be amended by deleting the words "and arbitration" and replacing them with "or litigation."

Paragraph 4.4.6 shall be deleted.

Paragraph 4.4.8 shall be deleted.

Article 4.5 "Mediation" shall be deleted in its entirety.

Article 4.6 "ARBITRATION" shall be deleted in its entirety and the parties expressly agree that disputes or claims arising under the Contract Documents shall not be subject to arbitration unless mutually agreed by the parties in writing.

5.1.1 In line 2, after "site" delete "." and add "or to otherwise furnish labor, material, or other services with respect to a portion of the WORK."

5.1.2 In line 3, after "site" delete "." and add "or to otherwise furnish labor, material, or other services with respect to a portion of the WORK."

5.2.3 After the first grammatical sentence, delete the remainder of the paragraph.

5.3.1 In line 1, after "appropriate" add "written" and delete "written where legally required for validity."

After 5.3.1 add:

"5.3.2 All subcontracts shall be in written form and shall specifically provide that OWNER is an intended third-party beneficiary of the subcontract."

Paragraph 5.5 shall be added as follows:

5.5 Contractor shall promptly notify Owner and Architect of any material defaults by any Sub-contractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Sub-contractor or other materialman or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

6.2.3 Delete in its entirety.

6.2.4 In line 1, after "damage" delete "wrongfully".

7.1.1 In line 1, before "by" add "only".

7.1.2 In line 3, delete "alone" and substitute "and is subject to the approval of OWNER".

7.1.3 At the end add:

"Except as permitted in Paragraph 7.3 and subparagraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that OWNER has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents."

After 7.2.2 add:

"7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited, to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule."

7.2.4 CONTRACTOR shall keep and periodically submit to OWNER copies of a log for all Change Orders.

7.3.1 At the end, add, "CONTRACTOR shall keep and periodically submit to OWNER copies of a log for all Construction Change Directives and a log for all requests for information."

7.3.6 In line 5, after "profit" add "not to exceed a total maximum of fifteen percent (15%) for all WORK.

7.4.1 After "authority" add "after having obtained OWNER's approval".

After 8.1.1 add:

"8.1.1.1 The WORK shall be fully completed within the time limit and/or date stated in the Contract between OWNER and CONTRACTOR.

"8.1.1.2 Liquidated Damages: If CONTRACTOR shall fail to fully complete the WORK within the stated time (subject however to extension of time duly granted in the manner and for the causes specified in the General Conditions), CONTRACTOR shall be charged by and shall pay to OWNER, as liquidated damages, the sum as per specifications in the Legal Notice for Bidders for the WORK remaining incomplete beyond the time fixed for the completion. CONTRACTOR hereby agrees that from the nature of the project it would be impracticable and extremely difficult to fix the actual damage that would or will be suffered in the event that CONTRACTOR should fail to fully complete the WORK by the time limit or date stated and the amount of the liquidated damages are fair and reasonable. The parties agree that the liquidated

damages are a reasonable forecast of just compensation for the harm done to OWNER that would be caused by CONTRACTOR's failure to timely complete the WORK. CONTRACTOR agrees that the amount of liquidated damages due OWNER may be deducted by OWNER from any moneys that might otherwise be or become payable to CONTRACTOR."

8.3.1 At the end of the grammatical sentence, delete ".", substitute ":", and add:

"provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of CONTRACTOR or that are otherwise the responsibility of CONTRACTOR and shall also be net of any contingency or 'float' time allowance included in CONTRACTOR's construction schedule. CONTRACTOR shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with ARCHITECT and OWNER to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal."

8.3.3 At the end, add:

"CONTRACTOR shall not be entitled to damages of any type for delays caused by OWNER, his servant, agents, employees, or separate CONTRACTORS hired or retained by OWNER. CONTRACTOR may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. Changes in the WORK, regardless of the extend or number of such Changes or OWNER's exercise of any of its remedies of suspension of the WORK or requirement of correction or re-execution of any defective WORK, shall not under any circumstances be construed as intentional interference with CONTRACTOR's performance of the WORK."

9.2.1 In line 1, after the third "the" add "OWNER and". In line 2, after "WORK," delete the balance of the subparagraph and substitute the following:

"which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as ARCHITECT may direct or as required by OWNER. This schedule, when approved by ARCHITECT and OWNER, shall be used to monitor the progress of the WORK and as a basis for Certificates for Payment. All items with entered values will be transferred by CONTRACTOR to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directives values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by ARCHITECT and approved by OWNER. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed, and value yet to be completed. All blanks

and columns must be filled in, including every percentage complete figure.”

9.3.1 At the end add:

“Any allowances included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall be accompanied by a certification by an office of CONTRACTOR to the effect that:

There are no known mechanics’, materialman’s or laborers’ liens or claims, or any other liens or claims, legal or equitable, contractual, statutory, or constitutional, outstanding or known to exist at the date of this Application; all due and payable bills with respect to the WORK have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics’, materialman’s or laborers’ lien or claim, or any other lien or claim, legal or equitable, contractual, statutory, or constitutional, on the WORK; and waivers and releases from all Subcontractors, laborers, and material men for WORK done and materials furnished have been obtained in such form as to constitute an effective waiver and release of all such liens and claims under the laws of the state within which the Project is located and shall be delivered to ARCHITECT together with CONTRACTOR’s waiver and release of liens and claims at the time of submission of the Application for Payment.”

9.3.3 At the end add:

“The vesting of such title shall not impose any obligations on OWNER or relieve CONTRACTOR of any of its obligations under the Contract, that CONTRACTOR shall remain responsible for damage to or loss of the WORK, whether completed or under construction, until responsibility for the WORK has been accepted by OWNER in the manner set forth in the Contract Documents.”

9.4.2 In line 2, after “and” add “on all other information available to ARCHITECT including, without limitation,”. In line 8, after “certified”, delete “.” and add “and that the aggregate amount theretofore paid to CONTRACTOR plus any applicable retention does not exceed the value of the completed portion of the WORK.” In line 10, delete “reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by OWNER to substantiate CONTRACTOR’s right to payment, or (4)”.

9.5.1.6 In line 2, delete “and” and substitute “or”.

9.5.1.7 In line 1, delete “persistent”.

After 9.5.2 add:

9.5.3 Notwithstanding any provision contained within this Article, if the Work has not attained

Substantial Completion with the contract time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

9.6.1 At the end, add, "OWNER may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to, those defaults set forth in Clauses 9.5.1.1 through 9.5.1.7. OWNER shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured."

Article 9.6.4 shall be amended by inserting a period after the word "Subcontractor" and deleting the phrase "except as may otherwise be required by law".

Article 9.6.7 shall be deleted.

9.7.1 In line 2, after "not" add ", for reasons other than a default of the Contract, including, but not limited to, those defaults set forth in Clauses 9.5.1.1 through 9.5.1.7". In line 3 delete "or awarded by arbitration".

After 9.7.1 add:

"9.7.2 If OWNER is entitled to reimbursement or payment from CONTRACTOR under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by OWNER. Notwithstanding anything contained in the Contract Documents to the contrary, if CONTRACTOR fails to promptly make any payment due OWNER, or if OWNER incurs any costs and expenses to cure any default of CONTRACTOR or to correct defective Work, OWNER shall have an absolute right to offset such amount against the Contract Sum and may, in OWNER's sole discretion, elect either to (i) deduct an amount equal to that which OWNER is entitled from any payment then or thereafter due CONTRACTOR from OWNER, or (ii) issue a written notice to CONTRACTOR reducing the Contract Sum by an amount equal to that which OWNER is entitled."

9.8.1 In line 1, after "thereof" add "(which OWNER agrees to accept separately)".

9.8.4 In line 5, delete "Substantial Completion of the WORK or designated portion thereof" and substitute "issuance of the certificate of final payment by ARCHITECT". At the end, add:

"The WORK will not be considered suitable for Substantial Completion review until all Project systems included in the WORK are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of OWNER's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general,

the only remaining WORK shall be minor in nature, so that OWNER and/or OWNER's employees and the general public could occupy the building on that date and the completing of the WORK by CONTRACTOR would not materially interfere or hamper OWNER's employees or the general public (or those claiming by, through, or under OWNER). As a further condition of Substantial Completion acceptance, CONTRACTOR shall certify that all remaining WORK will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. If CONTRACTOR requests a Substantial Completion review, and ARCHITECT, after performing the Substantial Completion review, finds that the Project was not ready for the Substantial Completion review, then CONTRACTOR shall pay the ARCHITECT's fees for any additional Substantial Completion reviews."

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 such Certificate. Upon such acceptance, the Owner shall make payment up to the amount of retainage as adjusted for any Work that is incomplete or not in accordance with the requirements of the Contract Documents.

Article 9.9.1 shall be amended by deleting the phrase "Clause 11.4.1.5" and inserting the phrase "Article 11.5".

9.10.4 In line 2, clause .2, delete "or"; In line 2, clause .3, delete "." and substitute "; or"; and add at the end ".4 faulty or defective WORK appearing after Substantial Completion."

10.3.3 Delete in its entirety.

10.5 Delete in its entirety.

11.1 delete 11.1 in its entirety and substitute the following:

11.1.1 The Contractor shall purchase and maintain with a company or companies lawfully authorized to do business in the State of Texas such insurance as will protect the Contractor and the Owner from Claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than the Contractor's employees;
- .3 claims for damages because of bodily injury, occupational 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 claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under paragraph 3.18.

11.1.2 "The Owner, its officers, employees, volunteers, elected officials, and Architect shall be covered as additional insureds for liability arising out of activities performed by, for, or on behalf of, the Contractor, including general supervision of the Contractor, products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no specific limitations on the coverage afforded the Owner, its officers, employees, or volunteers. In the event that Contractor purchases Project Management Protective Liability Insurance for the Project, Contractor shall not be required to name Owner and Architect as additional insureds on such liability coverage."

11.1.3 "In the event of any failure by CONTRACTOR to comply with the provisions of this Paragraph 11.1, OWNER may, at its option, on notice to CONTRACTOR, suspend the Contract for cause until there is full compliance with this Paragraph 11.1 and/or terminate the Contract for cause.

Alternately, OWNER may purchase such insurance at CONTRACTOR's expense, provided that OWNER shall have no obligation to do so and if OWNER shall do so, CONTRACTOR shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. CONTRACTOR shall provide to OWNER a certified copy of any and all applicable insurance policies upon request of OWNER. The obligation to procure and maintain any insurance required by Article 11 is a separate responsibility of CONTRACTOR and is independent of the duty to furnish a certified copy or a certificate of such insurance policies."

"11.1.4 Further, CONTRACTOR shall require all Subcontractors to carry similar insurance coverages and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to OWNER for approval before any WORK commences."

11.1.5 "In the event CONTRACTOR fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, CONTRACTOR shall indemnify, defend, and hold harmless the INDEMNIFIED PARTIES (as defined in Article 11.6.1) from any and all claims for which the required insurance would have provided coverage. This indemnity obligation is in addition to any other indemnity obligation provided in the Contract."

**11.1.6 SCHEDULE OF INSURANCE COVERAGES:**

<u>Coverage</u>	<u>Minimum Amounts and Limits</u>
11.1.7 Worker's Compensation	Statutory Limits
Employer's Liability	\$500,000.00
i. Bodily Injury by Accident	\$500,000.00 Each Accident
ii. Bodily Injury by Disease	\$500,000.00 Each Employee
iii. Bodily Injury by Disease	\$500,000.00 Policy Limit
11.1.8 <u>Commercial General Liability</u>	
Bodily Injury/Property Damage	\$1,000,000.00 per Occurrence
(Premises Operations, Independent Contractors, Products/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage)	
11.1.9 <u>Comprehensive Automobile Liability</u>	\$1,000,000.00 Combined Single Limit Per Occurrence

The successful Proposer must obtain at its expense an owner's liability insurance policy naming the County, its employees and the Architect/Engineer insured.

- 11.1.12 All Policies shall contain special endorsements to include:
- 11.1.12.1 The County as an additional insured (except for Workers Compensation);
- 11.1.12.2 Waiver of subrogation in favor of County under the Workers Compensation and Employers' Liability Policies.
- 11.1.12.3 A statement that a notice shall be given to County by certified mail thirty (30) days prior to cancellation or upon any material change in coverage.

After 11.2.1 add:

11.2.1.2 By signing the Contract or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that coverage will be based on proper reporting or classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

Delete 11.3.1. in its entirety and substitute the following:

11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Paragraphs 11.1.8 and 11.1.8.1.

11.4 Delete 11.4 in its entirety and substitute the following:

11.4.1 Builders Risk Insurance. The successful bidder must obtain at its expense, on an all risk basis, builder's risk insurance coverage, including workmanship acceptable to the County, in the amount of insurance equal at all times to 100% of the contract sum. The policy must also name its subcontractors and the County as additional insureds, as their respective interests may appear. The policy must have the following endorsement: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises." For renovation projects, the County waives subrogation for damage by fire to an existing building structure if building structure is in the care, custody or control of the contractor and the builder's risk policy must be endorsed to include coverage for an existing building structure.

11.4.2 Delete.

11.4.3 The Contractor waives all rights against (1) Owner, Owner's elected officials, agents and employees, the Subcontractors, Sub-subcontractors, agents, and employees, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their Subcontractors, Sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this paragraph or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as a fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents, and employees of any of them by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had a insurable interest in the property damaged.

11.4.4 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers. The Contractor shall pay all Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require Subcontractors to make payment to their Sub-subcontractors in similar manner. If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor under the insurance proceeds.

11.4.5 Partial occupancy or use shall not affect the validity or coverage of property insurance.

11.5 Delete in its entirety and substitute the following:

11.5.1 The Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the faithful performance of the Contract and also a one hundred percent (100%) Payment Bond, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with the Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Title 12, Chapter 3503 of the Texas Insurance Code.

11.5.1.1 The Contractor shall deliver the required Bonds to the Owner not later than the date of the preconstruction meeting. All Bonds will be reviewed by the Architect for compliance with the Contract Documents prior to the execution of the Contract. In the event that Architect has any questions concerning the sufficiency of the bonds,

Architect shall refer the bonds to Owner or Owner's representative for decision.

11.5.1.2 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the Bonding Company shall be provided.

11.5.2 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 permit a copy to be made.

11.5.3 The Bonds shall be provided to comply with the terms and provisions of Chapter 2253 of the Texas Government Code. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be the date of execution of the Contract. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld until sufficient bonds are provided by Contractor.

12.1.1 In line 3, after "Time" add "or Contract Sum".

12.2.1 In line 12, after "ARCHITECT" add ", incomplete, defective".

12.2.2 In line 2, after "of the" add "entire"; after "WORK" delete "or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1," and substitute "(unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties), or within such longer period of time as may be prescribed by law or in equity,". In line 4, after "to be" add "defective or otherwise". In line 7 after "condition." delete the next two grammatical sentences and substitute the following:

"This corrective period 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 performance of the WORK. Corrective WORK shall be warranted to be free from defects for a period equal to the longer of six (6) months after the completion of the corrective WORK or one (1) year after the Date of Substantial completion (subject to extension as previously described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable special warranty, if applicable, required by the Contract Documents. Any defect in such WORK shall be corrected again by CONTRACTOR promptly upon notice of the defect from OWNER. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the WORK under the Contract and termination of the Contract."

At the end of the last grammatical sentence of this subparagraph, delete (.) And substitute, "by OWNER."

After 12.2.2.2 add:

"12.2.2.1.1 Just before the termination of the various guarantee periods, CONTRACTOR shall accompany OWNER's agent and ARCHITECT on an inspection tour of the building and shall note any defects and shall start remedying these defects within ten (10) days of the inspection tour and shall prosecute the WORK without interruption until accepted by OWNER and ARCHITECT, even though such prosecution should extend beyond the limit of the guarantee period."

12.2.4 In line 2, after "caused" add "in whole or in part". In line 3, after "is" add "defective or otherwise".

12.2.5 In line 2, after "Documents" delete "." and substitute "or under law or in equity." and delete "of one year".

12.3.1 In line 1, after "is" add "defective or otherwise".

13.4.1 In line 3, after "law" delete "." and add "or in equity or by any other agreement, and any such rights and remedies shall survive the acceptance of the WORK and/or any termination of the Contract Documents."

13.5.1 Delete the last grammatical sentence in its entirety and substitute the following:

"ARCHITECT, OWNER, and CONTRACTOR shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the WORK. ARCHITECT or OWNER may at any time request and receive from CONTRACTOR satisfactory evidence that materials, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve CONTRACTOR from its obligations under the Contract Documents unless specifically so stated by OWNER in writing."

13.5.2 If Architect, Owner, Contractor, or public authorities having jurisdiction determine that portions of the work require additional testing, inspection, or approval not included under subparagraph 13.5.1, Owner will provide or contract for the inspection services, the testing of construction materials engineering, or the verification testing services necessary. Architect, Owner, and Contractor shall cooperate for the timely scheduling of such tests and inspections.

13.5.3 In line 2, after "Documents," delete the remainder of the subparagraph and substitute the following:

"or reveal faulty or otherwise defective WORK, or if the necessity of any such testing, inspection, or approval procedure arises out of the fault, neglect, or omission of CONTRACTOR, CONTRACTOR shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by CONTRACTOR's failures, including, without limitation, those costs of repeated and additional procedures and compensation for ARCHITECT's services and expenses of OWNER's personnel and consultant fees and expenses. Such costs shall be paid by CONTRACTOR within ten (10) days of receipt of invoice from OWNER with supporting data attached."

13.5.4 Required certificates of testing, inspection, or approval shall be secured by Contractor and delivered to Owner, unless such testing or inspection services are arranged by Owner.

13.5.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the work.

Paragraph 13.6.1 shall be deleted and replaced by the following:

13.6.1 An overdue payment bears interest at the rate of one percent (1%) each month, or at the legal rate established by the Texas Government Code, currently in Section 2251.025. Any such payment shall be deemed overdue on the thirty-first (31<sup>st</sup>) day after Owner receives an invoice from Contractor.

13.7 Delete in its entirety.

Article 13.9, EQUAL OPPORTUNITY, shall be included as follows:

#### 13.9 EQUAL OPPORTUNITY

13.9.1 The Contractor shall maintain policies of employment as follows:

13.9.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies.

13.9.1.2 The Contractor and the Contractor 's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment with regard to race, religion, color, sex, or national origin.

Article 13.10 shall be added as follows:

### 13.10 Certification of Asbestos-Free Project

13.10.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the construction company.

13.10.2 Certification shall further state that should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

13.10.3 Final payment shall not be made until this letter of certification has been received.

14.1.1 In line 1, delete "30" and substitute "sixty (60)".

14.1.1.3 and 14.1.1.4 Delete in their entirety.

14.1.3 Delete in its entirety and substitute the following:

"If one of the above reasons exists, CONTRACTOR may, upon fourteen (14) days' written notice to OWNER AND ARCHITECT, terminate the Contract, unless this reason is cured prior to the expiration of the notice period, and recover from OWNER payment of WORK properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for payment for costs directly related to WORK thereafter performed by CONTRACTOR in terminating such WORK including reasonable demobilization and cancellation charges provided said WORK is authorized in advance by ARCHITECT and OWNER."

14.1.4 Delete in its entirety and substitute "OWNER shall not be responsible for damages for loss of anticipated profits on WORK not performed on account of any termination described in Subparagraphs 14.1.1 and 14.1.2."

14.2.1 In line 1 of .1 delete "persistently or repeatedly" and in the second line, after "materials" add "equipment". In line 1 of .3 delete "persistently" and after ";" delete "or". In line 1 of .4 delete in its entirety and substitute "disregards the instructions of ARCHITECT or OWNER (when such instructions are based on the requirements of the Contract Documents);" After .4 add ".5 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of CONTRACTOR's creditors, or a trustee or receiver is appointed for CONTRACTOR or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws; or .6

otherwise does not fully comply with the Contract Documents."

14.2.2 In line 1, after "OWNER" delete ", upon certification by ARCHITECT that sufficient cause exists to justify such action,".

14.2.4 Delete in its entirety and substitute the following:

"To the extent the costs of completing WORK, including compensation for additional professional services and expenses, exceed those costs that would have been payable to CONTRACTOR to complete the WORK except for CONTRACTOR's default, CONTRACTOR will pay the difference to OWNER, and this obligation for payment shall survive termination of the Contract. Such costs incurred by OWNER will be determined by OWNER and confirmed by ARCHITECT."

After 14.2.4 add:

"14.2.5 In addition to OWNER's right to remove CONTRACTOR from any part of WORK pursuant to the Contract Documents, OWNER may, at any time, at will and without cause, terminate any part of WORK or any subcontract or all remaining WORK for any reason whatsoever by giving seven (7) days' prior written notice to CONTRACTOR specifying the part of WORK or subcontract to be terminated and the effective date of termination. CONTRACTOR shall continue to prosecute the part of WORK not terminated. If any part of WORK or subcontract is so terminated, CONTRACTOR shall be entitled to payment for WORK properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to WORK thereafter performed by CONTRACTOR in terminating such WORK or subcontract including reasonable demobilization and cancellation charges provided said WORK is authorized in advance by ARCHITECT and OWNER. No payment shall be made by OWNER, however, to the extent that such WORK or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, OWNER will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the WORK, the Contract Documents shall remain in full force and effect.

"14.2.6 OWNER shall not be responsible for damages for loss of anticipated profits on WORK not performed on account of any termination described in Subparagraph 14.2.5.

"14.2.7 Upon a determination by a court of competent jurisdiction that termination of CONTRACTOR pursuant to Subparagraph 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Subparagraph

14.2.5 and CONTRACTOR's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Subparagraph 14.2.5."

14.4.3 In line 2, delete "along with reasonable overhead and" and substitute "without any overhead or".

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Owner:

By \_\_\_\_\_

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Contractor:

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