

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

AGREEMENT made as of the 27 day of January in the year 2022
(In words, indicate day, month and year.)

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

Nueces County
901 Leopard Street
Corpus Christi, TX 78401

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

JM Davidson
P.O. Box 4639
Corpus Christi, TX 78469

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

Bob Hall Fishing Pier Marine Debris Removal and Demolition
15820 Park Road 22
Corpus Christi, TX 78401

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

Greg Pesek, P.E.
Jacobs Engineering Group, Inc.
555 North Carancahua, Suite 320
Corpus Christi, Texas 78401

The use of the term "Architect" throughout this Agreement shall apply to the professional services of Architects or Engineers authorized by law to perform the services described in this Agreement.

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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

Init.

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:11:30 ET on 01/27/2022 under Order No.6009857342 which expires on 01/14/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.
User Notes:

(3B9ADA3D)

TABLE OF ARTICLES

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

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and written Modifications signed by both parties that are 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. As used in the Contract Documents, the terms “AIA Document A201 – 2017”, “General Conditions”, “General Conditions of the Contract for Construction” or “A201-2017” shall refer to the General Conditions document that pertains to the Project, as modified or amended by the Owner for the Project. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. In the event of conflict, terms and conditions contained in the Agreement shall take precedence over terms and conditions contained in the General Conditions, and the terms and conditions in the General Conditions, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:

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

The date of commencement shall be the day that the Contractor receives a Notice to Proceed from the Owner. If a Building Permit is not available or other approvals are not available for the entire Project, the Contractor must commence work on those portions of the Project that do not require a Building Permit or other approvals on receipt

Init.

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The “American Institute of Architects,” “AIA,” the AIA Logo, “A101,” and “AIA Contract Documents” are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:11:30 ET on 01/27/2022 under Order No.6009857342 which expires on 01/14/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

(3B9ADA3D)

of a Notice to Proceed. The Notice to Proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner.

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

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

§ 3.3 Substantial Completion

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

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

Not later than one hundred (100) calendar days from the date of commencement of the Work.

By the following date:

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

Portion of Work	Substantial Completion Date
Not Applicable	

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

§ 3.3.4 Subject to adjustments of the Contract Time as provided in the Contract Documents, Final Completion shall be 30 calendar days after the date of Substantial Completion.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor up to the Contract Sum in current funds for the Contractor's performance of this Agreement. The Contract Sum shall be \$ 3,006,857.00, subject to additions and deductions as provided in the Contract Documents. The Contractor shall provide the Work, as described in Article 2, for \$ 3,006,857.00, being the awarded bid amount, subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

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

Item	Price
Alt. 1 - Salvage of Trusses	\$ 10,000

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

Item	Price	Conditions for Acceptance
Not Applicable		

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

Item	Price
Not applicable	

Init.

§ 4.3.1 The Contract Sum contains an Owner's Contingency / Owner Betterment Allowance. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Owner's authorized representative may approve any expenditure from Owner's Contingency without further Court approval. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

§ 4.4 Unit prices, if any:

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

Item No.	Description	Unit	Bid Quantity	Unit Price	Extended Price
3	Temporary Construction Halt for Turtle Activity (Hourly)	Hour	1 Hour	2,822.00	2,822.00
4	Temporary Construction Halt for Turtle Activity (Daily)	Day	1 Day	28,220.00	28,220.00

§ 4.5 Liquidated damages, if any:

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

The Work to be performed under this Agreement shall be substantially completed by the date stated in the Agreement or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions. The parties hereto agree that time is of the essence of this Agreement, and that actual and direct damages would be suffered by the Owner if the Contractor does not substantially or finally complete all Work called for in the Contract Document by the specified dates. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. It is therefore expressly agreed, as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from any payment(s) due to the Contractor a sum equal to Five Hundred Dollars (\$500.00) for each and every Calendar Day beyond the agreed date which the Contractor has agreed to for Substantial Completion or Final Completion of the Work included in the Contract Documents. It is expressly understood that said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not substantially or finally completed within the agreed time, or with the legally extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only, and in no sense shall be considered a penalty or forfeiture; said damage being caused by additional compensation to personnel, and other miscellaneous increased costs, all of which are difficult of exact ascertainment. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

§ 4.6 Other:

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

Not Applicable

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

§ 5.1.3 The Contractor shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on form substantially similar to AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any

Init.

additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Contractor of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Contractor within forty-five (45) days of receipt of the Certificate for Payment from the Architect and Program Manager, if applicable, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum, less any unused Owner's Contingency, among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require, but shall contain as a minimum, individual line items for each section of the table of contents of the Project Manual separated by material costs and labor costs. Additionally, General Conditions costs shall be separated into individual line items. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers. Additionally, beginning with the second application for payment, proof of each payment to Contractor's subcontractors and suppliers for payment within 61-days after payment. The Application for Payment shall be submitted on a schedule of values basis. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

§ 5.1.6 In accordance with AIA Document A201™–2017, as modified by the Owner for the Project, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be provided using forms substantially similar to the AIA G702 and G703 format and computed as follows:

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017, as modified by the Owner for the Project;
- .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 as modified by the Owner for the Project; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.6.3 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

§ 5.1.6.4 If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall

Init.

determine as the cost for completing incomplete Work and the value of unsettled claims.

§ 5.1.6.5 Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety;
- .2 The location must be a bonded warehouse;
- .3 The surety must agree, in writing, to each request for payment; and
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other 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 (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

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

Five percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

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

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

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

No reduction allowed

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Final Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Final Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Final Completion.)

At Final Completion full retainage may be requested

§ 5.1.8 If Final Completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017, as modified by the Owner for the Project.

§ 5.1.9 Except with the Owner's prior written approval or as otherwise provided in in Section 9.3.2 of the AIA Document A201-2017, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. If the Contractor wishes to bill for materials or equipment which cannot be stored on site, the Contractor shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Contractor shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Contractor as the first line of accountability and financial responsibility. Delays due to issues arising from stored

materials shall not be considered as reasonable justification to release the Contractor from meeting the schedule unless the Owner agrees to such delay in writing in advance of any delay.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, minus disputed sums, authorized deductions, and liquidated damages, shall be made by the Owner to the Contractor after

- .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, as modified by the Owner for the Project, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 the Contractor has provided all documents required by Section 3.5 et seq. and 9.10.2 of AIA Document A201-2017; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 45 days after Owner's Court's vote or other required approval pursuant to applicable policy. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest at the rate established by Texas Government Code Chapter 2251.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, as modified by the Owner for the Project, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

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

Greg Pesek, P.E.
Jacobs Engineering Group, Inc.
555 North Carancahua, Suite 320
Corpus Christi, Texas 78401

§ 6.2 Binding Dispute Resolution

For any Claim or dispute between the parties, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[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.

Init.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017, as amended by the Owner for the Project.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, as amended by the Owner for the Project, 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.)

As described in AIA Document A201-2017, as amended by the Owner for the Project.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as amended by the Owner for the Project.

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner’s Authorized Representative:

(Name, address, email address, and other information)

The Owner’s Commissioners Court, by majority vote at a duly noticed and lawfully called public meeting, is the only representative of Owner, a Texas County organized under the laws of the State of Texas, having the power to enter into a contract, to execute a change order requiring an increase in the Contract Sum, or to agree to an extension to the contractual completion date, unless this authority is lawfully delegated. The Court may designate herein an Authorized Representative to act on its behalf during the course of construction. Such authorized representative shall have authority to act on behalf of the Owner concerning decisions that do not require a majority vote of the Court and shall have the authority to bind the Owner only to the extent expressly authorized and delegated by the Court. The Authorized Representative shall have no implied authority. Such Authorized Representative shall also bring recommendations to the Court on any matter requiring Court approval. In the event that changes in the scope of the Work are required before the Court’s next regularly scheduled meeting or in order to facilitate and expedite the timely completion of the Work, the Court’s authorized representative shall have authority to approve construction changes that do not exceed the Allowance and Contingency amounts set forth herein. Any such change shall be confirmed in writing between the Contractor and the Court’s Authorized Representative and notice of such approved changes shall be given to the Court at its next regularly scheduled meeting. The Court shall act as soon as reasonably possible to avoid unnecessary delays in the construction completion date. Except as expressly authorized by the Owner or the Contract Documents, the Architect does not have the authority to bind the Owner. The term “Owner” means the Owner or the Owner’s authorized representative.

The Owner’s Authorized Representative: County Judge

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

JM Davidson
P.O. Box 4639
Corpus Christi, TX 78469

§ 8.4 The Contractor’s representative shall not be changed without ten days’ prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered, whether or not actually received, three days after it is deposited in the U.S. Mail, when sent by certified mail, return receipt requested, postage prepaid, and correctly addressed to the party at the address provided in this Agreement. Notice given in any other manner shall be deemed delivered when actually received. Either party may change its address for notice by giving notice of the change of address in accordance with this provision. The Architect must be copied on notices sent to the Owner.

§ 8.7 Other provisions:

§ 8.7.1 Program Manager shall have, and is hereby granted by Owner, full and complete power, authority, and discretion to act for, and in the name, place, and stead of, Owner in carrying out and discharging the responsibilities and obligations of Program Manager under the Agreement between the Owner and Program Manager; provided, however, that Program Manager shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever except to the extent specifically provided in the Agreement between the Owner and the Program Manager or specifically authorized in writing by Owner. In no event shall Program Manager be authorized to execute any documents, agreements, or other instruments on behalf of Owner without written approval by Owner. In no event shall Program Manager have the authority to modify completion dates of the Project Schedule without written approval by Owner. Program Manager shall have the authority to modify interim milestones dates not affecting the completion dates specified in the Agreements between the parties. In no event shall Program Manager have the authority to modify contract value of the Project without written approval by Owner. In no event shall Program Manager have the authority to relax or to bind the Owner to codes and standards imposed by the Authorities Having Jurisdiction, unless authorized in writing by the Owner.

The Program Manager: Lockwood, Andrews & Newnam, Inc.

§ 8.7.2 The Owner is an organization exempt from Texas taxes. Owner shall not be responsible for sales, consumer, use, and similar taxes on labor, materials, equipment, systems, and other items purchased for the Project which Owner would ordinarily be exempt.

§ 8.7.3 *Subcontracts, purchase orders and rental agreements entered into by the Contractor shall contain provisions permitting assignment to the Owner upon default by Contractor under the Contract Documents. If the Owner accepts such assignment, the Owner shall be responsible for the payment of amounts which would have been reimbursable to Contractor under this Agreement and for which payment has not already been made to the Contractor. Contractor shall be responsible for the payment of any other amounts payable under the Contract. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase order or rental agreement.*

§ 8.7.4 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the term “including” is not limiting and the terms “hereof,” “herein,” “hereunder” and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any part hereto regardless of who is responsible for its preparation.

§ 8.7.5 In the event of any suit or action arising out of or in connection with any of the Contract Documents, the prevailing party in such proceedings shall be entitled to recover reasonable attorney fees and court costs.

Init.

§ 8.7.6 Any provision in the Contract Documents to the contrary notwithstanding, if any of the facilities to be constructed or modified under this Agreement or the Contract require the issuance of a Certificate of Occupancy or other regulatory approval, then Substantial Completion of any such facilities shall not be deemed to have been attained for those facilities prior to the date on which an unconditional Certificate of Occupancy or other regulatory approval is obtained.

§ 8.7.7 If the building will be used or occupied by the Owner or members of the public, the Contractor shall be responsible for maintaining safe routes of travel from sidewalks and parking areas to the building, and shall reroute access as necessary to maintain safe access during construction at no additional cost beyond the agreed contract amount.

§ 8.7.8 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is certifying 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. Contractor is also representing that it will require all subcontractors to provide workers' compensation coverage on all employees who will provide services on the Project for the duration of the Project and to provide written certifications of such coverage to the Contractor. The Contractor will provide the certifications to Owner. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

§ 8.7.9 The Contractor shall, as a condition precedent to allowing any subcontractor to proceed with any work on the Project, either require that the subcontractor provide proof of the existence of workers' compensation coverage for its employees, or, at the Contractor's sole discretion, provide for coverage of the subcontractor's employees under the Contractor's workers' compensation insurance coverage. The Contractor shall maintain records of all required certificates of insurance provided by the subcontractors, and shall forward copies to the Owner and the Architect.

§ 8.7.10 Warranty. The Contractor shall be responsible for the coordination of warranty work, if any during the first year after Substantial Completion of the Entire Work.

§ 8.7.11 The Owner's competitive procurement solicitation documents/packet and the response of the Contractor to same are incorporated herein by reference as if copied verbatim. The Contractor agrees to comply with all requirements incorporated or included in the competitive procurement solicitation documents/packet by the Owner

§ 8.7.12 The Contractor shall record the progress of the Project. On a monthly basis, or as otherwise agreed to by the Owner, the Contractor shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Contractor shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress and accomplished, Subcontractors working on the site, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner. The log shall be available to the Owner and Architect at any time during work hours and shall be presented for discussion at the Project progress meetings.

§ 8.7.13 The Contractor shall utilize online project management software in the manner described in Exhibit B Project Management Software.

§ 8.7.14 If (a) Contractor is not a sole proprietorship; (b) Contractor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Contractor hereby certifies and verifies that neither the Contractor, nor any affiliate, subsidiary, or parent company of the Contractor, if any (the "Contractor Companies"), boycotts Israel, and the Architect agrees that the Contractor and Contractor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Init.

§ 8.7.15 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor misrepresents its inclusion on the list, then such omission or misrepresentation shall void this Agreement.

§ 8.7.16 If Contractor is not a governmental body and (a) this Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner; or (b) this Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner in a fiscal year of Owner, the following certification shall apply; otherwise, this certification is not required. As required by Tex. Gov't Code § 552.374(b), the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this RFP and Agreement and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter." Pursuant to Subchapter J, Chapter 552, Texas Government Code, the Contractor hereby certifies and agrees to (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to Owner for the duration of the Agreement; (2) promptly provide to Owner any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of Owner; and (3) on completion of the Agreement, either (a) provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Contractor, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

§ 8.7.17 Where the Project requires outdoor Work, the Contractor shall install and maintain a weather station at the Project site that monitors, permanently records for retrieval, and reports live information on the air temperature, wind speed and direction, and rainfall through Final Completion. Weather data collected from the weather station shall be the basis for evaluating weather delay claims.

§ 8.8 Governing Law and Venue

§ 8.8.1 Section 13.1 of the General Conditions document pertaining to the Project, as modified by the Owner, shall apply to the Agreement, the Contract, and the Contract documents in all respects. No provision of this Agreement is a waiver of any immunity, defense, or a consent to suit.

§ 8.8.2 Venue

To the maximum extent permitted by applicable law, the parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, the Agreement, the Contract, or any of the Contract Documents shall be in the state courts of Nueces County, Texas, and the parties hereby waive any and all objections to the agreed-upon venue as stated herein. The Contract, including but not limited to the Agreement and all other Contract Documents, is performable entirely in Nueces County, Texas.

§ 8.9 Severability

If any provision or part of the Contract Documents is held to be illegal, invalid, or unenforceable under any present or future law or regulation, such provision shall be fully severable and the Contract Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Contract Documents. The remaining provisions of the Contract Documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.

§ 8.10 Information and Services Required of the Owner

§ 8.10.1 Pursuant to the requirements of the Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, as modified by Owner for the Project
- .2 Exhibit A, Insurance and Bonds

Init.

AIA Document A101® – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A101," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This document was produced by AIA software at 16:11:30 ET on 01/27/2022 under Order No.6009857342 which expires on 01/14/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@aia.org.

User Notes:

(3B9ADA3D)

- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner for the Project
- .4 Drawings

Number	Title	Date
Sheets 1-12	Bob Hall Fishing Pier Marine Debris Removal & Demolition (Jacobs Engineering Group, Inc.)	October 2021

- .5 Specifications
 - Selective Demolition and Removal**

Section	Title	Date	Pages
02 41 19	Selective Demolition and Removal	October 2021	1-7
Appendix A	Hazardous Material Survey	October 2021	
Appendix B	Offshore Reef Disposal Site	October 2021	1-4
Appendix C	USACE Permit	December 1980	1-9
Appendix D	Side Scan Sonar Survey	September 2021	1-19
Appendix E	Utility Map	October 2021	1-8
Appendix F	Pier Inspection Report	January 2021	1-27
Appendix G	1981 Pier Renovation Plans	October 1981	1-31
Appendix H	2010 Pavilion Expansion Plans	August 2010	1-15
Appendix I	Kitchen Renovation at Bob Hall Pier	December 2012	1-18

- .6 Addenda, if any:

Number	Date	Pages
1	Dec. 13, 2021	5 Pages
2	Dec. 22, 2021	6 Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- .1 Owner’s competitive procurement solicitation documents and Contractor’s responses and proposals to same.
- .2 The Project Manual for the Project, including all sections to same, whether issued or created prior to or after the execution of this Agreement.
- .3 Statutory Payment and Performance Bonds.

Init.

- .4 Certificates of Insurance required of the Contractor.
- .5 All documents listed or described in Section 1.1.1 of AIA Document A201-2017, as amended by the Owner for the Project.
- .6 Scale/Schedule of Prevailing Wages (attached as Exhibit to the AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by the Owner for the Project) and incorporated herein as if fully set forth.
- .7 Any modifications to this Agreement or to the Contract or any Contract Documents approved by the Parties.
- .8 Any documents stated in this Agreement as being a part of or incorporated into this Agreement or the Contract
- .9 Exhibit B – Project Management Software

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

OWNER *(Signature)*

Barbara Canales Nueces County Judge
(Printed name and title)

(Date)

CONTRACTOR *(Signature)*

James Olivarez, VP of Marine Ops
(Printed name and title)

(Date)

EXHIBIT A

Insurance and Bond Requirements

CONTRACTOR’S LIABILITY INSURANCE

The Contractor shall carry and maintain in force the insurance described below. Prior to execution of the Contract, the Contractor shall procure insurance coverage in the types and amounts as follows:

1. Workmen’s Compensation	All liability arising out of Contractor’s employment of workers and anyone for whom Contractor shall be liable for Worker’s Compensation claims. Worker’s Compensation is required and no "alternative" form of insurance shall be permitted. Waiver of Subrogation in favor of Owner and Program Manager required.
2. Employer’s Liability	\$1,000,000.00
3. Commercial General Liability	
a. Each Occurrence	\$1,000,000.00
b. General Aggregate	\$2,000,000.00 (A Designated Construction Project General Aggregate Limit shall be provided)
c. Personal & Advertising Injury	\$1,000,000.00 (Each Person)
d. Products & Completed Operations	\$1,000,000.00 (for one (1) year commencing with issuance of Final Certificate of Payment)
4. Property Damage	
a. Each Occurrence	\$1,000,000.00
b. Aggregate	\$2,000,000.00
c. Independent Contractors	\$1,000,000.00 (Each Occurrence), \$2,000,000.00 (Aggregate)
5. Commercial Automobile Liability	
a. Bodily Injury/Property Damage	\$1,000,000.00 (Combined single limit)
6. Umbrella or Excess Liability	
a. Each Occurrence and Aggregate	(a) One times Contract amount for all Contracts with the following minimum and maximum: (i) \$1,000,000.00 minimum limit (ii) \$25,000,000.00 maximum limit (b) The Umbrella shall provide coverage over the workmen’s compensation, comprehensive general liability, and comprehensive automobile liability.
7. All Risk Builder’s Risk	All Risk Builder’s Risk against the perils of fire, lightning, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, and all other perils in the amount one hundred percent (100%) of the value of the improvements including transit and materials stored off site. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery

	equipment up to installation, during testing, and until acceptance by Owner.
--	--

1. The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner's Representative will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas.
2. The General Liability and Automobile so issued in the name of Contractor shall also name the Owner, and Program Manager as additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. It is the intent of the parties to this Agreement that the General Liability coverage required herein shall be primary to and shall seek no contribution from all insurance available to Owner, with Owner's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Contractor shall be endorsed to provide such primary and non-contributing liability. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.
3. If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance to the extent Contractor the subject loss is due to the fault of Contractor. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner then the Contractor shall bear all reasonable costs properly attributable thereto.
4. The insurance required by this Exhibit A shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.
5. Contractor shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar day's prior written notice to Owner. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Exhibit A. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of Section 7 hereof shall apply.
6. Contractor and its Subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its Subcontractors are in force and the necessary certificates and statements pursuant to Section 5 hereof have been received by Owner and the Architect or Owner has issued a written notice to proceed.
7. As an alternative and at Owner's option and expense, Owner may elect to furnish or to arrange for any part or all of the insurance required by Exhibit A hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.
8. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or

DWC-84), showing statutory Workers' Compensation insurance coverage for the person's or entity's employees providing services on a Project is required for the duration of the Project.

- a. Duration of the Project includes the time from the beginning of the Work on the Project until the Contractor's/person's Work on the Project has been completed and accepted by the Owner.
- b. Persons providing services on the Project ("Subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, contractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.
- c. Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- d. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code Section 401.011(44) for all employees of the Contractor providing services on the Project for the duration of the Project.
- e. The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.
- f. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- g. The Contractor shall obtain from each person providing services on a Project, and provide to the Owner:
 - i. A certificate of coverage, prior to that person beginning Work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - ii. No later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- h. The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
- i. The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- j. The Contractor shall post on each Project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- k. The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:
 - i. Provide coverage, based on proper reporting of classification codes and payroll

amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project;

- ii. Provide to the Contractor, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
 - iii. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - iv. Obtain from each other person with whom it contracts, and provide to the Contractor:
 1. A certificate of coverage, prior to the other person beginning Work on the Project; and
 2. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 3. Retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
 4. Notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew, or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
 5. Contractually require each person with whom it contracts to perform as required by items 1-4, with the certificates of coverage to be provided to the person for whom they are providing services.
 1. By signing this 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 the coverage will be based on proper reporting of 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.
 - m. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.
 - n. The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i).
9. The Owner and Contractor shall waive all rights against (1) each other and the Contractors, Subcontractors, agents and employees each of the other, and (2) the Architect and separate Contractors, if any, and their contractors, Subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work. The foregoing waiver afforded the Architect, his agents and employees shall not extend to the

liability imposed by other portions of the Agreement. The Owner or the Contractor, as appropriate, shall require of the Architect, separate contractors, contractors and Subcontractors by appropriate agreements, written where legally required for validity, similar waivers, each in favor of all other parties enumerated in this Exhibit A.

PERFORMANCE BOND AND PAYMENT BOND

1. The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum.
2. The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional Obligee.
3. The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this Project.
 - a. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.
 - b. The Sureties shall promptly file a signed copy of the Contract, Performance, and Payment Bonds with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code or, in the case of a Construction Manager, as required by Article 8 of the A133-2009 as modified by the Parties.
4. All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the contract. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.
5. 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.
6. Upon the request in writing 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.
7. Bonds shall be signed by an agent resident in the State of Texas and the date of the 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, 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) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

8. By inclusion of this Section 8 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Program Manager, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Program Manager, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

EXHIBIT B

PROJECT MANAGEMENT SOFTWARE

PART 1 - GENERAL

1.1 DESCRIPTION

A. Owner requires the use of Project Management Software (Software) to track the progress of planning, design, and/or construction contracts. Software is an internet-accessed project tracking application featuring a centralized database of project information, assisting the Owner and Program Manager in managing project documents and communications. The joint use of Software is to facilitate electronic exchange of information, key processes, and overall management of the contract.

B. Software shall be the primary means of project information submission and management. All project documentation and correspondence, including, but not limited to, Invoices, Submittals, Architect's Supplemental Instruction, Requests for Information (RFI), Requests for Proposal (RFP), Change Orders, etc are to be transmitted electronically using Software.

C. Documents requiring original signature will be input into Software, and signed originals are to be received by Program Manager on the same day the document is logged in electronically in Software.

D. When required by the Owner or Program Manager, paper documents shall also be provided (e.g. the signature of Contract Modifications and submission of Contract Claims). In the event of discrepancy between the electronic version and paper documents, paper documents shall govern.

E. Documents received that are not input into Software may not be accepted by the Owner and Program Manager. **If the documents do not exist in the Software, then they do not exist. The Software is the single source of truth for Project information.**

1.2 USER ACCESS LIMITATIONS

A. The Program Manager will control access to Software by allowing access and assigning user profiles to authorized users. User profiles will define levels of access into the system, determine assigned function-based authorizations (what can be seen), and determine assigned user privileges (what can be done).

B. The Owner will provide access to the Software upon notice that Contractor has activated a license with the Software company, thereby creating an authorized user. Sub-consultants, sub-contractors, and/or suppliers will not have direct access to Software unless those entities activate a license with the Software company. The Sub-consultants, sub-contractors, and/or suppliers may purchase seat licenses from the Software company. Entry of information exchanged and/or transferred between authorized users and sub-consultants, sub-contractors, and/or suppliers on Software shall be the responsibility of the authorized users.

C. Owner will not reimburse for the cost of Software. Accounts can be purchased at no additional cost to the Owner by payment to the Software company. Each account will allow one (1) user to access the system per login. Other costs associated with the use of this system shall be evenly distributed in project overhead and spread across the duration of the contract (a separate cost line item shall not be allowed).

D. A minimum of one (1) half day training session on Software will be provided by the Owner to all authorized users as required. Training time shall be at a mutually agreed upon date and site.

E. Data entered in a collaborative mode (i.e. entered with the intent to share as determined by permissions and workflows within the Software system) by any and all authorized users shall be jointly owned.

1.3 AUTOMATED SYSTEM NOTIFICATION AND AUDIT LOG TRACKING

A. Review comments made (or lack thereof) by the Owner, Program Manager, Architect, and/or Engineer on submitted documentation shall not relieve parties from compliance with requirements of the Contract Documents.

B. All parties are responsible for managing, tracking, and documenting work to comply with the requirements of the Contract Documents. Owner or Program Manager acceptance via automated system notifications or audit logs extends only to the face value of submitted documentation and does not constitute validation of submitted information.

1.4 COMPUTER REQUIREMENTS

A. Authorized users shall use computer hardware and software that meets the minimum requirements of the Software system as recommended by the manufacturer to access and utilize Software. As recommendations are modified authorized users shall upgrade their system(s) as required to meet the minimum recommendations. In the event that cloud-based systems are used, users shall ensure proper browser compatibility. Upgrading of a users computer system(s) shall not be justification for a cost or time modification to the Contract.

B. Authorized users shall ensure that connectivity to the Software system (whether at the home office or jobsite) is accomplished through high-speed access, as the time required to download information and input data becomes excessive and may cause the system to "time out".

1.5 USER RESPONSIBILITY

A. Authorized users shall be responsible for the validity of their information placed in Software and for the abilities of their personnel. Authorized users shall be knowledgeable in the use of computers, including Internet Explorer, e-mail programs such as Outlook, word processing programs such as Word, spreadsheet programs such as Excel, and Adobe Portable Document Format (PDF) document distribution programs.

B. Authorized users shall utilize existing forms in Software to the maximum extent possible. If a form does not exist in Software and users must include as an attachment or by uploading the data file, PDF documents will be created through electronic conversion rather than optically scanned.

1.6 USER ACCESS ADMINISTRATION

A. All parties shall provide the Program Manager with a list of key personnel for acceptance. List shall include authorized users of Software.

B. Notify the Program Manager immediately of any users that are to have access removed. Resubmit the personnel list whenever modified. User changes will take effect within one (1) working day of accepting the requested change.

C. The Owner reserves the right to perform a security check on all potential users.

1.7 CONNECTIVITY PROBLEMS

A. Software is a web-based environment and therefore subject to inherent speed and connectivity problems of the Internet. Authorized users provided access shall be responsible for their own connectivity to the Internet.

B. Software response time is dependent on the users equipment, including processor speed, modem speed, Internet access speed, etc. and current traffic on the Internet. The Owner will not be liable for any delays associated from the usage of Software including, but not limited to: slow response time, down time periods, connectivity problems, or loss of information.

PART 2 - PRODUCTS

2.1 SOFTWARE COMPANY

A. Contact accounting@systemates.com and purchase 1+ licenses directly from Projectmates/Systemates, Inc. These can be purchased a single license at a time.

B. Pricing: Subject to change

1. Cost for each (1) user license is \$600 annually.

2. Web-based training is required for new users. Cost for training is \$600.

3. Example 1: If order is for 1 user, invoice will be \$600 annual subscription (1 user license) plus \$600 for 1 web-based training session for a total of \$1,200.

4. Example 2: If order is for 8 users, invoice will be for \$4,800 annual subscription (8 users licenses @ \$600 each) plus \$600 for 1 web-based training session for a total of \$5,400.

C. Once payment is made, user account(s) will be added with expiration date after one year unless renewed.

D. Credit cards are accepted with a 4% convenience fee.

E. Texas Sales Tax 8.25%

PART 3 - EXECUTION

3.1 SOFTWARE UTILIZATION

A. Software shall be utilized in connection with submittal preparation and information management. Requirements of this section are in addition to requirements of all other contract requirements.

1. Design Document Submittals: Provide all concept drawings, review phase submissions, contract documents and specifications in PDF format and native file format.
2. Shop Drawings: Shop drawing and design data documents shall be submitted as PDF attachments to the Software submittal workflow process and form. All PDF shop drawing submittal documents shall have the Contractor's review and submittal stamp (including signatures) as specified in Specification Section "Submittal Procedures", the same as if submitted as hard copy. Examples of shop drawings include, but are not limited to:
 - a. Standard manufacturer installation drawings.
 - b. Drawings prepared to illustrate portions of work designed or developed by the Contractor.
 - c. Steel fabrication, piece, and erection drawings.
 - d. Paving and grading plans
 - e. Traffic safety and control plan
3. Product Data: Product catalog data and manufacturers instructions shall be submitted as PDF attachments to the Software submittal workflow process and form, except that color charts and similar color oriented pages shall be submitted as hard copy separate from and in addition to the PDF copy. Submittal forms shall indicate when hard copy color documents are submitted. All PDF product data submittal documents shall have the Contractors review and submittal stamp (including signatures) as specified in Specification Section "Submittal Procedures", the same as if submitted as hard copy. Examples of product data include, but are not limited to:
 - a. Manufacturer's printed literature.
 - b. Preprinted product specification data and installation instructions.
4. Samples: Sample submittals shall be physically submitted as specified in Specification Section "Submittal Procedures". Contractor shall enter submittal data information into Software with a copy of the transmittal form(s) attached to the submittal. Examples of samples include, but are not limited to:
 - a. Product finishes and color selection samples.
 - b. Product finishes and color verification samples.
 - c. Finish/color boards.
 - d. Physical samples of materials.
5. Administrative Submittals: All administrative submittals shall be recorded within the Software. Examples of administrative submittals include, but are not limited to:
 - a. Master Schedule
 - b. List of contact personnel.

- c. Plans for safety, demolition, environmental protection, and similar activities.
6. Administrative Processes: All administrative tasks shall be performed within the Software. Examples of administrative processes include, but are not limited to:
- a. Requests for Information (RFI).
 - b. Revision documents (ASI, Clarification, Minor Change).
 - c. Submittal Register.
 - d. Field activity and observation reports (including daily reports)
 - e. Rework Items List, etc.
 - f. Meeting minutes for quality control meetings, progress meetings, pre-installation meetings, etc.
 - g. Punchlist
 - h. Warranty requests and tracking log.
7. Cost and Contract Submittals:
- a. Contracts
 - b. Invoices
 - c. Applications for Payment
 - d. Proposal Requests (PR, CPR, or RFP)
 - e. Change Orders (CO)
 - f. Allowance Expenditure Authorization (AEA)
8. Compliance Submittals: Test report, certificate, and manufacture field report submittals shall be submitted on Software as PDF attachments. Examples of compliance submittals include, but are not limited to:
- a. Field test reports.
 - b. Quality Control certifications.
 - c. Manufacturers' documentation and certifications for quality of products and materials provided.
9. Record and Closeout Submittals: In addition to actual delivery of hard copies of Closeout Submittals, Closeout Submittals shall be submitted on Software as PDF documents. Examples of record submittals include, but are not limited to:

- a. Consent of Surety
- b. Certificate of Completion (substantial, final, compliance)
- c. Certificate of Occupancy (temporary, final)
- d. Operation and Maintenance Manuals: Final documents shall be submitted as specified.
- e. As-built Drawings: Final documents shall be submitted as specified.
- f. Release of Lien
- g. Warranties
- h. Extra Materials, Spare Stock, etc.: Submittal forms shall indicate when actual materials are submitted.

10. Exceptions: Documents with legal consequences, contract modifications, contract claims, security implications, and those required by other agencies may require an additional submittal as original hard copy with original signatures and seals. Hard copies of these documents shall be submitted as specified or as directed by the Program Manager. Requirement of both hard and electronic submittals shall not be justification for a cost or time modification to the Contract.

END OF SECTION