

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

**COUNTY ADDENDUM FOR
SERVICES CONTRACT
(Emergency Response
Property Damage Restoration)
(BUYBOARD CONTRACT #591-19)**

Important Notice: County Purchase Orders and Contracts constitute expenditures of public funds, and all vendors are hereby placed on notice that such procurement is subject to the extent authorized by Texas law, including but not limited to Tex. Const. art. XI, § 7, the Texas Government Code, the Texas Local Government Code, the Texas Transportation Code, the Texas Health & Safety Code, and Opinions of the Texas Attorney General relevant to local governmental entities.

THIS CONTRACT is made and entered into by and between **Williamson County, Texas** (hereinafter "CUSTOMER" or "The County"), a political subdivision of the State of Texas, acting herein by and through its governing body, and **Blackmon Mooring of Austin, Inc.** (hereinafter "BLACKMON MOORING"). Customer agrees to engage BLACKMON MOORING as an independent contractor, to assist in providing certain operational services pursuant to the following terms, conditions, and restrictions:

I.

Incorporated Documents: This Agreement constitutes the entire Agreement between the parties and may not be modified or amended other than by a written instrument executed by both parties. Documents expressly incorporated (as if copied in full) into this Agreement include the following:

- A. Blackmon Mooring Emergency Response and Service Contract;
- B. Williamson County Contract Addendum;
- C. BuyBoard Contract #591-19; and
- D. Any necessary insurance certificates.

The County reserves the right and discretion (pursuant to public policy and Texas Constitutional principles) to determine applicable provisions where there is any conflict between this Contract and any of the above-referenced contract documents/exhibits or incorporated documents.

II.

No Waiver of Sovereign Immunity or Powers: Nothing in the contract relevant to this addendum will be deemed to constitute a waiver of sovereign immunity or powers of Customer, the Williamson County Commissioners Court, or the Williamson County Judge.

III.

Compliance with All Laws: BLACKMON MOORING agrees and will comply with any and all local, state or federal requirements with respect to the services rendered.

IV.

Good Faith: BLACKMON MOORING agrees to act in good faith in the performance of the contract relevant to this addendum.

V.

Payment: Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date The County receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by The County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of The County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

VI.

Termination for Convenience: This agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving fourteen (14) days written notice thereof. In the event of termination, The County will only be liable for its pro rata share of services rendered and goods actually received.

VII.

Right to Audit: BLACKMON MOORING agrees that Customer or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any

and all books, documents, papers and records of BLACKMON MOORING which are directly pertinent to the services to be performed under this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. BLACKMON MOORING agrees that Customer shall have access during normal working hours to all necessary BLACKMON MOORING facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Customer shall give BLACKMON MOORING reasonable advance notice of intended audits. In no circumstances will Motorola be required to create or maintain documents not kept in the ordinary course of Motorola's business operations, nor will Motorola be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary.

VIII.

Mediation: The parties agree to use mediation for dispute resolution prior to and formal legal action being taken on the contracts relevant to this contract.

IX.

Not Applicable: Section 8.1.1 of the Blackmon Mooring Emergency Response and Service Contract is deleted as not applicable to this contract.

X.

Revised: Section 11.1 of the Blackmon Mooring Emergency Response and Service Contract is revised by adding the phrase "To the extent authorized under Texas law," to the beginning of the first sentence.

XI.

County Judge or Presiding Officer Authorized to Sign Contract: The presiding officer of Customer's governing body who is authorized to execute this instrument by order duly recorded may execute this addendum on behalf of Customer.

WITNESS the signatures of all parties in duplicate originals to be effective as of the date of the last party's execution below.

WILLIAMSON COUNTY:

Authorized Signature

Date: _____, 2020

BLACKMON MOORING:



Authorized Signature

Date: 1/10, 2020



Response Service Agreement

Corporate Headquarters • 5718 Airport Frwy • Haltom City • Texas • 76117
Local Address: 2251 Picadilly Dr., Ste. C320 • Round Rock • Texas • 78664
24 Hour Line (877) 730-1948 • (512) 730-4267 • Fax (512) 835-2140

Intending to establish procedures for expeditiously contracting for response services, Customer and Blackmon Mooring of Austin, LLC or an affiliate ("BLACKMON MOORING") agree to the provisions set forth below.

Ordering Service

- ◇ In the event of a loss, Customer shall call BLACKMON MOORING'S 24-hour emergency response number at **877-730-1948** or their **Account Manager (per instructions developed)**, and identify the general scope of services requested and location.
- ◇ As soon as possible (within one (1) hour), a Project Manager will contact Customer to make a preliminary assessment of services required and BLACKMON MOORING'S response. If Customer wishes BLACKMON MOORING to proceed, and BLACKMON MOORING can do so, BLACKMON MOORING will dispatch a representative and/or crew to the location of the loss.
- ◇ Customer will enter into an "Advanced Work Authorization" ("AWA") on the form attached as Exhibit A. Upon receipt of the AWA, if BLACKMON MOORING is able to respond immediately, BLACKMON MOORING will accept the AWA, mobilize resources and commence the work outlined in the AWA.
- ◇ Work performed under an AWA will be billed at the attached Rate Schedule, Exhibit B, or the then prevailing BLACKMON MOORING Rate Schedule which will be supplied at the time of the loss, or at unit rate pricing. Customer agrees to pay invoices within twenty-one (21) days.
- ◇ Upon agreement of the full scope of services to be performed and pricing, BLACKMON MOORING and Customer may execute a Service Contract, including a Scope of Work that lists in detail the work to be performed, pricing and any other special terms and conditions between the parties.

This Agreement does not expire unless cancelled by either party with 30 days notice. However, Customer and BLACKMON MOORING are contractually bound only to the extent AWA's or Service Contracts are issued and accepted. In the absence of a new Service Contract at the time of the loss, the terms and conditions of the AWA is as stated.

CUSTOMER:

Address: _____

Telephone: _____
Facsimile: _____
e-mail: _____

Correspondence goes to the attention of:

Name: _____
Address: _____

Telephone: _____
Facsimile: _____

PROPERTY LOCATION:

This Response Service Agreement is entered into on 1/10, 2020 by and between Blackmon Mooring of Austin, LLC, a Texas Limited Liability Company or an affiliate and Williamson County, TX ("Customer"), a _____. This Agreement, its terms and conditions, and all attachments, shall apply to all orders issued and accepted under this agreement. Agreed to and accepted by:

CUSTOMER:

Signature: _____
Name: _____
Title: _____

BLACKMON MOORING

Signature: _____
Name: Robby Jackson
Title: General Manager

☐ Duplicate

BLACKMON MOORING OF AUSTIN, LLC

2251 Picadilly Dr., Ste. C320
Round Rock, Texas 78664

24-Hour Hotline (877) 730-1948

EMERGENCY RESPONSE AND SERVICE CONTRACT

This Emergency Response and Service Contract (the "Contract") is made and entered into as of _____, by and between BLACKMON MOORING OF AUSTIN, LLC, a Texas corporation ("BLACKMON MOORING"), and _____, a _____ corporation/limited liability company (the "Customer"), with its principal place of business at _____.

BACKGROUND

BLACKMON MOORING is engaged in the business of, among other things, providing large scale commercial and industrial property damage restoration services following catastrophic events, such as fires, floods, earthquakes, and hurricanes.

Customer is the owner (or landlord/manager) of certain Property (described in attached Exhibit I) that may some day be damaged by one or more catastrophic events and Customer may in the future request that BLACKMON MOORING provide it with certain services to help restore the Property.

BLACKMON MOORING and Customer desire to establish in advance the terms, conditions and procedures for contracting for emergency response services in an expeditious manner.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which both BLACKMON MOORING and Customer acknowledge Customer and BLACKMON MOORING agree as follows:

ARTICLE 1- EMERGENCY RESPONSE

- 1.1 In the event of a loss, Customer shall call its **Account Manager (per instructions developed)**, or BLACKMON MOORING's 24-hour emergency response number at **877-730-1948**, and identify the general scope of services requested and location.
- 1.2 Within one (1) hour, a Regional Project Manager shall contact Customer to make a preliminary assessment of services required and BLACKMON MOORING's response capabilities. If Customer wishes BLACKMON MOORING to proceed, and BLACKMON MOORING can do so, BLACKMON MOORING will dispatch a representative to the location of the loss or take such other measures as are reasonably necessary to prepare a detailed proposal to perform services.
- 1.3 Should Customer want emergency/interim services performed while a formal proposal is being prepared, Customer may issue an "Advanced Work Authorization" ("AWA") on the form enclosed as Exhibit J. Upon receipt of the AWA, BLACKMON MOORING will accept the AWA, mobilize resources and commence the work outlined in the AWA.

- 1.4 This Agreement contains the terms and conditions for all AWAs.
- 1.5 Work performed under an AWA will be billed at the then prevailing BLACKMON MOORING/BMS CAT Time and Materials Rate Schedule. The Current Rate Schedule is attached to this Agreement as Exhibit C (and may be amended from time to time in the future). Written notice of the change in rates and a copy of the new rates will be provided with 30 days notice, not to exceed once annually.
- 1.6 Customer agrees to pay invoices issued under an AWA within fourteen (14) days.
- 1.7 Upon agreement of the full scope of services to be performed and pricing, BLACKMON MOORING and Customer may execute a Work Order in the form of attached Exhibit A, including a Scope of Work that lists in detail the work to be performed, pricing (if different from the Rate Schedule) and any other special terms and conditions between the parties. When the Work Order is subsequently executed, its terms and rates, to this extent different from those in the AWA, shall apply. Otherwise, the terms of this Contract shall cover all Work Orders.
- 1.8 This Contract does not expire unless cancelled by either party with thirty (30) days written notice.

ARTICLE 2- THE WORK

- 2.1 By executing a Work Order (Exhibit A) or Advanced Work Authorization (Exhibit J), Customer requests and BLACKMON MOORING agrees to provide all labor, materials and equipment reasonably necessary to complete the described work (the "Work"). Any changes to this Contract and to the Work may only be made by written modifications signed by Customer and BLACKMON MOORING pursuant to Article 9, below.
- 2.2 In the performance of the Work, BLACKMON MOORING shall report and respond solely to Customer and shall take Customer's direction and authorization only from Customer. With the exception of emergency situations, BLACKMON MOORING and Customer shall communicate with each other only through their respective employees. If the Customer so chooses, it may designate in writing a specific Customer representative who shall have express authority to bind Customer with respect to all matters requiring Customer's approval and authorization.
- 2.3 Should Customer desire to appoint a third party to receive BLACKMON MOORING information or to provide direction to BLACKMON MOORING and otherwise bind Customer with respect to all matters requiring Customer's approval or authorization, then Customer must designate that party (the "Third Party Representative") in writing, using the form attached to this Contract as Exhibit B. In such event, Customer agrees that BLACKMON MOORING is entitled to rely upon the accuracy and completeness of statements, decisions, and actions made by the Third Party Representative without the need for further investigation or confirmation, and that Customer shall be responsible to pay for any work ordered, decision made, or authorization provided by such Third Party Representative.
- 2.4 The appointment of a Third Party Representative shall be effective when the Third Party Representative accepts the appointment and delivers a fully executed Acceptance, in the form attached to this Contract as Exhibit B, to BLACKMON MOORING.

- 2.5 Except in emergency situations, BLACKMON MOORING shall not communicate with any person other than a properly designated Third Party Representative who accepts its appointment.
- 2.6 Once Customer has designated a Third Party Representative, Customer shall not change the designation without seven (7) days written notice to BLACKMON MOORING.

ARTICLE 3- CONTRACT DOCUMENTS

- 3.1 The Contract Documents consist of this Contract; the Work Order and/or Scope of Work (Exhibit A); a Third Party Representative designation and acceptance (Exhibit B); a Time and Materials Rate Schedule, attached to and made a part of this Contract as Exhibit C; Technical Reports or other documents that, to the extent applicable, are attached as Exhibit D, any agreed upon Change Orders signed by the parties after execution of this Contract, on the form attached as Exhibit E; any Advanced Work Authorizations (Exhibit J); and a Statement of Work Complete, on the form attached to and made a part of this Contract as Exhibit F.
- 3.1.1. **Document, Micrographics, and Magnetic Media Restoration Services.** If the service to be performed by BLACKMON MOORING includes restoration of documents, the term and conditions on the attached "Document, Micrographics, and Magnetic Media Restoration Scope and Terms," (Exhibit G) shall apply to the document restoration services performed.
- 3.2 Nothing contained in the Contract Documents shall create any contractual relationship between Customer and any subcontractor or sub-subcontractor of BLACKMON MOORING, nor shall it create any contractual relationship between BLACKMON MOORING and any other contractor, subcontractor or sub-subcontractor of Customer.
- 3.3 The Contract Documents constitute the entire agreement between Customer and BLACKMON MOORING with respect to the Work, except for subsequent written modifications signed by both parties after execution of this Contract. No prior or contemporaneous engagements, promises, representations, or warranties, whether oral or written, shall have any force or effect.

ARTICLE 4- TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 4.1 BLACKMON MOORING shall commence and substantially complete the Work to be performed in a timely manner and in accordance with the Contract Documents. For purposes of this Agreement, substantial completion means the completion of the Work in a workman-like manner, consistent with existing industry standards, to the extent commercially reasonable in the context of the project.
- 4.2 If BLACKMON MOORING is disrupted, adversely impacted or delayed at any time in the progress of the Work by changes ordered in the Work, by conduct of Customer or any of its other contractors or agents, by labor disputes, fire, unusual delay in transportation, adverse weather conditions, acts of terror, security breaches on the Property, unavoidable casualties, or any natural or other cause beyond BLACKMON MOORING's control, or by any cause that the Customer determines may justify the delay, then for each delay BLACKMON MOORING shall be entitled to recover all of the costs and expenses it incurs attributable to such delay and the time for BLACKMON MOORING to

complete its Work shall be extended for a reasonable time, but in no event less than the cumulative periods of the disruptions, impacts and delays.

- 4.3 When BLACKMON MOORING has substantially completed its Work, BLACKMON MOORING shall request that Customer inspect the Work and either acknowledge satisfaction or specific items that need to be completed or corrected. Within ten (10) business days of that request, Customer shall complete a Statement of Work Complete form (attached as Exhibit F) or Performance Deficiency Audit form (attached as Exhibit H), as appropriate, and return it to BLACKMON MOORING. Failure to return either the Statement of Work Complete or the Performance Deficiency Audit form, within the ten day period, shall constitute an acceptance in full by Customer of BLACKMON MOORING's Work.

ARTICLE 5- COMPENSATION

- 5.1 Customer shall pay for all Work performed under this Contract on either a fixed price or a time and materials basis (as designated in the Work Order). Work not performed for an agreed Fixed Price shall be compensated in accordance with BLACKMON MOORING's Time and Materials Rate Schedule (Exhibit C). Customer acknowledges that it has reviewed the charges on the Time and Materials Schedule, acknowledges that they are reasonable and agrees not to attempt to renegotiate them, or any part of them, after BLACKMON MOORING commences performance of its Work.
- 5.2 BLACKMON MOORING's pricing excludes any applicable sales or use taxes and prevailing wage labor costs which, to the extent reasonably believed by BLACKMON MOORING to be applicable, will be separately itemized and charged by BLACKMON MOORING and payable by Customer. This pricing also excludes any items which Customer, pursuant to the Contract Documents, agrees to pay or provide directly.

ARTICLE 6- PAYMENT

- 6.1 Prior to BLACKMON MOORING commencing the Work, Customer shall wire-transfer to BLACKMON MOORING the sum of one third of the contract amount on Fixed Price Contracts or one third of the estimated contract sum on Time and Material Projects as an advance payment (the "Advance") on Customer's account to be held by BLACKMON MOORING and applied at BLACKMON MOORING's discretion, including against the invoice designated by BLACKMON MOORING as the final invoice at the completion of the Work (the "Final Invoice"). Without BLACKMON MOORING's express written permission, the Advance may not be used as a set-off by Customer against any other invoice submitted by BLACKMON MOORING, or any sums that are due or will become due to BLACKMON MOORING under the Contract. Wiring instructions are as follows: **Comerica - Dallas, Texas, ABA#111000753, Acct. Name: Blackmon Mooring of Austin, LLC, Acct. No. 1880918071. Reference job number and invoice number.**
- 6.2 Time and Material Based Contracts - At regular intervals during its performance of the Work, and upon the completion of the Work, BLACKMON MOORING shall submit to Customer an itemized invoice setting forth the total amounts due, in accordance with the Time and Material Rate Schedule, for all labor, material, equipment, and any subcontracted services utilized in the performance of the Work during that time period. With respect to each such invoice, Customer shall pay the invoice within twenty-one (21)

calendar days following receipt, Customer may not set-off all or any part of any retained amount against any unrelated invoice.

- 6.3 Fixed price Contracts – Fixed Price Contracts will be billed as stated in Section 6.2 except that invoices will not be itemized or show detailed amounts because the Rate Schedule is not applicable. Fixed Price invoices are not subject to review or audit as the Work was to be performed at a specified price.
- 6.4 Interest shall accrue on amounts past due, at the lesser of (i) the maximum lawful interest rate or (ii) one and one-half percent (1 ½ %) per month (eighteen percent (18%) per annum). To facilitate on-time payments, BLACKMON MOORING recommends wiring the payment due pursuant to the wiring instructions set forth in Section 6.1 above.
- 6.5 **Customer agrees to make payment to BLACKMON MOORING for the labor, material and equipment and any other items BLACKMON MOORING provides pursuant to the Contract Documents in the amounts and on the terms specified in this Contract, regardless of whether Customer or another person or entity is legally responsible for restoration or remediation of the conditions involved and regardless of whether Customer is entitled to reimbursement for such costs from its or some other person's or entity's insurance carrier.**
- 6.6 Should Customer fail to pay any invoice when due, BLACKMON MOORING shall also be entitled to recover all costs and expenses incurred as a result of that failure, including but not limited to those related to demobilization and close out, site preservation, storage, and collection, including reasonable attorney's fees of collection.

ARTICLE 7- WARRANTIES AND OBLIGATIONS

- 7.1 BLACKMON MOORING warrants to Customer that all materials utilized in the Work will be of good quality and new, unless otherwise specified, and that all services provided will be performed in a workmanlike manner, consistent with the standards in the industry for such work. This warranty does not apply to any damage or defect caused by activity beyond BLACKMON MOORING's control, including abuse and modifications not executed by BLACKMON MOORING, as well as by improper or insufficient maintenance, improper operation, or normal usage, wear and tear.
- 7.2 BLACKMON MOORING warrants its work as described for a period or term of one (1) year from completion of the Work. Any claim under this warranty must be made in writing and received by BLACKMON MOORING within one month from the end of the Warranty Period. If a warranty claim is presented timely, BLACKMON MOORING will provide the appropriate remedy for that claim, as determined by BLACKMON MOORING's sole discretion, provided that Customer can establish that BLACKMON MOORING's Work is sub-standard, and not in compliance with industry accepted practice, when viewed in the context of the conditions present at the time the Work was performed.
- 7.3 **TO THE FULLEST EXTENT PERMISSIBLE, AND EXCEPT AS OTHERWISE PROVIDED IN THIS CONTRACT, BLACKMON MOORING EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF CONSTRUCTION, CONDITION, SUITABILITY, HABITABILITY, FITNESS FOR USE, AND MERCHANTABILITY.**

- 7.4 BLACKMON MOORING shall supervise and direct the Work, using its skill and attention, and be solely responsible for all cleaning and restoration means, methods, techniques, sequences and procedures utilized, as well as for coordinating all portions of the Work under the Contract, except as otherwise directed by Customer, or a properly designated Third Party Representative.
- 7.5 BLACKMON MOORING at all times shall keep the Property free from accumulation of waste materials or rubbish caused by its operations. At the completion of its Work, BLACKMON MOORING shall remove all of its waste materials and rubbish from and about the project site as well as its tools, construction equipment, machinery and surplus materials.

ARTICLE 8- CUSTOMER WARRANTIES AND OBLIGATIONS

- 8.1 Customer represents and warrants that:
- 8.1.1. It is a corporation/limited liability company organized and in good standing under the laws of the state specified above;
 - 8.1.2. It owns (or leases/manages/operates) the Property on which the BLACKMON MOORING will be performing the Work;
 - 8.1.3. It has had full opportunity to review, consider and approve all terms of this Contract, including the Scope of Work and the Time and Materials Rate Schedule; and
 - 8.1.4. It has the right, authority and capacity to enter into this Contract, make the payments required and otherwise fulfill the obligations imposed by this Contract.
- 8.2 Customer shall make the Property available to BLACKMON MOORING for the timely and efficient performance of the Work.
- 8.3 Customer shall secure and pay for any and all permits, licenses, easements, assessments or approvals of any kind or nature required for the performance of the Work, including the construction, use or occupancy of structures or changes in existing facilities.
- 8.4 Unless otherwise agreed to by the parties, Customer shall, at its cost, provide BLACKMON MOORING with access to all utilities and power sources reasonably necessary for BLACKMON MOORING to undertake and perform the Work.
- 8.5 Before BLACKMON MOORING commences the Work, to the extent reasonably necessary or appropriate for the performance of the Work, Customer shall supply to BLACKMON MOORING all available information concerning the presence and characteristics of any soil conditions, hazardous situations, biological infestations, and existing structures and systems on the Property which may be relevant to BLACKMON MOORING's Work. BLACKMON MOORING shall be entitled to rely on the accuracy and completeness of Customer's information without the need for further investigation or confirmation.

- 8.6 Customer shall coordinate the work of Customer's employees and any of its other contractors, workers, or material suppliers, and the presence and activity of visitors and others, so that they do not interfere with the performance of BLACKMON MOORING's Work. Customer shall be responsible to BLACKMON MOORING for any damages sustained by BLACKMON MOORING because of damage to BLACKMON MOORING equipment, personnel or the Work related to an act or omission of others at the project site employed or allowed there by Customer.
- 8.7 To the extent that Customer fails to make the Property available, secure appropriate approvals, supply the required information, coordinate activity on its site, or fulfill any other obligation and BLACKMON MOORING's performance of its Work is disrupted, adversely impacted, delayed or otherwise impaired, the time for BLACKMON MOORING's performance shall be extended accordingly and, in addition to the Compensation provided in Article 5, above, BLACKMON MOORING shall be entitled to recover as direct damages any and all reasonable costs and expenses which it incurs as a result of such failure(s).
- 8.8 Customer understands that BLACKMON MOORING's services may well include, in BLACKMON MOORING's sole discretion, the destruction and removal of equipment, fixtures and other tangible property which are or appear to be damaged. Customer shall advise BLACKMON MOORING in writing before BLACKMON MOORING provides its services of any specific apparently damaged item that it wants to retain or salvage. Customer waives any claim against BLACKMON MOORING for the removal or destruction of any property not specifically designated in writing to remain.

ARTICLE 9- CHANGES IN THE WORK

- 9.1 Changes in the Work may be accomplished after execution of this Contract, by a written amendment, known as a Change Order, to this Contract. To be effective, the Change Order must state the agreement of BLACKMON MOORING and Customer to a specific change in the Scope of Work, and the extent of the adjustment, if any, in the time for the performance of the Work. A copy of the Change Order form to utilize is attached as Exhibit E.
- 9.2 BLACKMON MOORING need not proceed with any change in or to the Work except pursuant to an agreed, written Change Order.

ARTICLE 10- INSURANCE

- 10.1 Customer shall maintain property insurance upon the entire Property at its full replacement cost value, plus an amount estimated to be the cost of the Work.
- 10.1.1. This insurance shall protect the interests of Customer, BLACKMON MOORING, and its subcontractors, if any, in the Work, shall be in an "all risk" or equivalent policy form, shall include, without limitation, insurance against fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, and shall cover compensation for BLACKMON MOORING's services and expenses required as a result of such insured loss. Customer shall pay any costs not covered by any deductible.

- 10.1.2. Customer's property insurance shall cover portions of the Work stored off site, and also portions in transit.
- 10.2 BLACKMON MOORING shall purchase and maintain liability insurance to protect it from claims under worker compensation acts and other employee benefit acts (where applicable), claims for damages because of bodily injury, including death, and from claims for damages to property, other than to the Work itself, which may arise out of or result from BLACKMON MOORING's performance under this Contract, whether such performance be undertaken by itself or by any subcontractor or anyone directly or indirectly employed by one or more of them.
- 10.3 To the extent permitted by the applicable policy, Customer and BLACKMON MOORING waive all rights against each other for damages caused by fire or other perils and paid by insurance obtained pursuant to this Contract or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. Customer shall require similar waivers from any other contractor it engages to work on the Property.

ARTICLE 11- MUTUAL INDEMNIFICATIONS AND WAIVERS

- 11.1 BLACKMON MOORING and Customer each agrees to indemnify and hold harmless the other party and the other party's shareholders (or members), directors, officers, employees and agents, from and against any and all claims, demands, or causes of action brought by persons not party to this Contract, whether for damages to property, business interests, or persons or for death, arising out of or related to the performance of this Contract or the conditions to which this Contract pertains, to the extent that any such claim, demand, or cause of action is attributable to a breach of contract, negligence, or other fault of the indemnifying party.
- 11.2 Except as otherwise expressly provided in this Agreement, BLACKMON MOORING and Customer waive claims against each other for consequential damages arising out of or relating to the Work or this Contract. This mutual waiver includes:
- 11.2.1. Damages incurred by Customer for rental expenses, losses of use, business, reputation, income, financing, profit, and for loss of management or employee productivity or of the services of such persons; and
- 11.2.2. Damages incurred by BLACKMON MOORING for principal office expenses, including the compensation of personnel stationed there, for losses of business, reputation, financing, and for loss of profit except anticipated profit arising directly from the Work or the time set aside for the Work.

ARTICLE 12- TERMINATION OF THE CONTRACT

- 12.1 BLACKMON MOORING and Customer may each terminate this Contract for cause fourteen (14) days after delivery of a written notice to the other party to do so.
- 12.1.1. For Customer, cause includes any persistent failure by BLACKMON MOORING to perform in accordance with this Contract, including, without limitation, failure to carry out the Work in accordance with the Contract Documents.

12.1.2. For BLACKMON MOORING, cause includes any material breach of the Contract by Customer, including, without limitation, Customer's failure to make payments as required; Customer's delay, disruption or interference with BLACKMON MOORING's ability to proceed timely or efficiently with the Work; and any event over which BLACKMON MOORING has no control, including labor disputes fire, unusual delay in transportation, adverse weather conditions, acts of terror, security breaches on the Property, unavoidable casualties, or any natural or other cause beyond BLACKMON MOORING's control, which renders BLACKMON MOORING's performance impracticable.

12.1.3. In order to exercise its right to terminate for cause, the terminating party shall specify in the notice provided the nature of the alleged failure to perform or other breach. Should the party receiving the notice cure the reason identified in the notice within fourteen (14) days after receipt, then this Contract may not be terminated for cause.

12.2 Customer may terminate this Contract without cause for its convenience upon fourteen (14) days written notice to BLACKMON MOORING, at which time BLACKMON MOORING shall be entitled to receive payment for the Work it has performed and for amounts due for losses incurred by reason of such termination, including, without limitation, reasonable demobilization and closeout costs related to early termination. In the event that Customer terminates BLACKMON MOORING for convenience, BLACKMON MOORING shall be entitled to allocate any portion of the Advance to cover losses incurred by such termination.

ARTICLE 13- ATTORNEY'S FEES

13.1 The prevailing party in any arbitration or litigation arising out of or related to this Contract shall, in addition to such other relief as may be awarded, be entitled to recover from the non-prevailing party the reasonable legal fees and expenses the prevailing party incurred in that proceeding.

ARTICLE 14- MISCELLANEOUS

14.1 This Contract shall be governed by the substantive laws of the State of Texas, United States of America.

14.2 This Contract may not be assigned by either party, without the written permission of the other party.

14.3 No provision of this Contract shall be waived except in a writing signed by the waiving party. No waivers of any provision of this Agreement shall constitute or be deemed a continuing waiver of that provision or a waiver of any other provision.

14.4 Any notice necessary or appropriate under this Agreement shall be effected by personal delivery, facsimile transmission or certified or registered mail directed as follows:

To:
Attn:

To: BLACKMON MOORING
Attn: Legal Department
5718 Airport Freeway
Haltom City, TX 76117
(877) 730-1948

IN WITNESS of their interest to be bound by the terms and conditions of this Contract,
BLACKMON MOORING and Customer execute this Contract as of the date written above.

(CUSTOMER)

By: _____
Name: _____
Title: _____
Date: _____

BLACKMON MOORING OF AUSTIN, LLC


By: 
Name: Robby Jackson
Title: General Manager
Date: 1/6/2020

EXHIBIT A

BLACKMON MOORING OF AUSTIN, LLC

2251 Picadilly Dr., Ste. C320
Round Rock, Texas 78664

24-Hour Hotline (877) 730-1948

Work Order

Pursuant to the Contract dated _____ by Blackmon Mooring of Austin, LLC ("BLACKMON MOORING") and Customer, the parties have agreed upon additional work to be performed by BLACKMON MOORING as described below or on the attached scope of Work. Customer hereby authorizes BLACKMON MOORING to mobilize and commence the Work. The terms and conditions of the Work to be performed are outlined in the Agreement. See continuation sheet(s) or Scope of Work.

Project Name: _____

Project Location: _____

General description of work to be performed – attach Scope of Work:

Fixed Price or Time and Materials Basis: _____

If Fixed Price, the agreed price is: _____

Other special terms or conditions _____

Desiccant Dehumidification - If the service to be performed by BLACKMON MOORING includes desiccant drying of the facility, approximately _____ square feet located at _____ will be dried at a rate of _____ per square foot for a total drying price of approximately _____. Customer understands and agrees that BLACKMON MOORING may supply desiccant or refrigerant dehumidification services in areas other than identified above, and that its charges for such work in those other areas will be on a Time and Material basis in accordance with the attached Rate Schedule.

Customer agrees to pay BLACKMON MOORING for all labor, materials, equipment and expenses utilized to mobilize, commence and perform the work described above in accordance with the attached BLACKMON MOORING Time and Materials Rate Schedule ("Rate Schedule"). Customer acknowledges that it has reviewed the charges and terms on the Rate Schedule and agrees that they are reasonable and that it will not attempt to renegotiate them, or any part of them, after BLACKMON MOORING commences performance of the Work.

(CUSTOMER)

BY: _____

NAME: _____

TITLE: _____

DATE: _____

**BLACKMON MOORING OF AUSTIN,
LLC**

BY: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT B

BLACKMON MOORING OF AUSTIN, LLC

2251 Picadilly Dr., Ste. C320
Round Rock, Texas 78664

24-Hour Hotline (877) 730-1948

THIRD PARTY REPRESENTATIVE DESIGNATION

____ (“Customer”), pursuant to Section 2.3 of the BLACKMON MOORING Emergency Response and Service Contract dated _____, Customer appoints _____ as its Third Party Representative, with _____ as its designated contact person. Customer agrees that BLACKMON MOORING is entitled to rely upon the accuracy and completeness of statements, decisions, and actions made by the Third Party Representative through its contact person without the need for further investigation or confirmation, and that Customer shall be responsible to pay for any work ordered, decision made, or authorization provided by the designated Third Party Representative.

(CUSTOMER)

By: _____
Name: _____
Title: _____
Date: _____

ACCEPTANCE

Third Party Representative accepts Customer’s designation, represents that it has read and understands the terms and conditions of the Service Contract executed by Customer and acknowledges that the Time and Materials Rate Schedule attached to and made a part of the Contract as Exhibit C (1) is fair and reasonable and (2) is not subject to negotiation during or after BLACKMON MOORING’s performance of its Work, as defined in the Contract.

The individual signing this Acceptance represents that s/he has the authority to do so and to bind the Third Party Representative to the terms of this Acceptance.

Third Party Representative

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT C

TIME AND MATERIALS RATE SCHEDULE

(Attached)

EXHIBIT D

AWA/TECH REPORTS

EXHIBIT E

BLACKMON MOORING OF AUSTIN, LLC

2251 Picadilly Dr., Ste. C320
Round Rock, Texas 78664

24-Hour Hotline (877) 730-1948

CHANGE ORDER

Customer:

Contractor:

Blackmon Mooring of Austin, LLC
2251 Picadilly Dr., Ste. C320
Haltom City, Texas 76117

Contract Date: _____ Change Order Date: _____

Contract Number: _____

Original Estimated Cost of Work: _____

Description of Project: _____

Description of Change to Scope of Work: _____

Adjustment in Time of Performance: _____

Revised Estimated Cost (or for a fixed price contract, the adjusted price) of Work: _____

(CUSTOMER)

Blackmon Mooring of Austin, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT F

BLACKMON MOORING OF AUSTIN, LLC

2251 Picadilly Dr., Ste. C320
Round Rock, Texas 78664

24-Hour Hotline (877) 730-1948

STATEMENT OF WORK COMPLETE

Customer: _____

Address: _____

Contract Number: _____ **Contract Date:** _____

Project Location: _____

Scope of Work Summary: _____

(Initial) I have inspected the Work performed by BLACKMON MOORING and/or its
designated Subcontractor under the above described Contract.

(Initial) No items of Work remain to be corrected to completed.

(Initial) All Work complies with the requirements of the Contract in all respects and has
completed to Customer's satisfaction.

Customer/Third Party Representative

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT G
DOCUMENT EXHIBIT

EXHIBIT H

BLACKMON MOORING OF AUSTIN, LLC

PERFORMANCE DEFICIENCY AUDIT

Customer: _____

Address: _____

Contract Number: _____ **Contract Date:** _____

Project Location: _____

Scope of Work Summary: _____

☐ I have inspected the Work performed by BLACKMON MOORING and/or its designated Subcontractors for which it is seeking payment under Invoice No. _____, dated _____.

☐ Except for the following items, no item of Work remains to be corrected and all Work complies with the requirements of the Contract in all respects and has been completed to Customer's satisfaction:

- 1.
- 2.
3. [Add additional sheet if necessary]

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT J

BLACKMON MOORING OF AUSTIN, LLC

Blackmon Mooring
blackmonmooring.com

24-Hour Hotline (877) 730-1948

ADVANCED WORK AUTHORIZATION

____ ("Customer") hereby authorizes Blackmon Mooring of Austin, LLC or an affiliate ("BLACKMON MOORING") to mobilize and perform the work described below (the "Work"):

Project Name: _____

Project Location: _____

General Description of work to be performed: _____

Check all Applicable

☐ Scope of Work to be submitted

☐ Estimated Cost of the Work to be submitted

☐ Emergency Services

☐ Fixed Price: _____

☐ Purchase Order #: _____

Other special terms or conditions: _____

Customer agrees to pay BLACKMON MOORING for all labor, materials, equipment and expenses utilized to mobilize, commence and perform the work described above in accordance with the attached Time and Materials Rate Schedule ("Rate Schedule") or in accordance with unit rate pricing. Customer acknowledges that they have reviewed the charges and terms on the Rate Schedule and agree that they are reasonable and that they will not attempt to renegotiate them, or any part of them, after BLACKMON MOORING commences performance of the Work. During the course of performance of the work, BLACKMON MOORING may add additional equipment to the schedule above at rates to be determined by BLACKMON MOORING.

In the event Customer and BLACKMON MOORING finalize and enter into a subsequent written Service Contract covering this Work and any other work, then any unbilled amounts for labor, material, equipment, any subcontracted services, as well as mobilization and all preparatory work, under this Advanced Work Authorization ("AWA") shall be included in invoices submitted under such Service Contract, even though such work may have been performed prior to the date the final Service Contract is executed.

In the event Customer and BLACKMON MOORING do not enter into a subsequent Service Contract as described above, BLACKMON MOORING shall, at regular intervals, invoice Customer for all work performed under this AWA plus the costs of demobilization, all in accordance with the Rate Schedule or unit rate pricing. Customer agrees to pay such invoice within twenty-one (21) days of receipt. In the event Customer does not submit payment when due, BLACKMON MOORING may at its sole discretion cease performance of the Work until such payment is received. All corporate notices and invoice payments shall be submitted to Blackmon Mooring of Austin, LLC, 5718 Airport Freeway, Haltom City, Texas 76117.

Customer agrees to make payment to BLACKMON MOORING for the labor, material and equipment and any other items BLACKMON MOORING provides pursuant to this AWA in the amounts and on the terms specified in this AWA, regardless of whether Customer or another person or entity is legally responsible for restoration or remediation of the conditions involved and regardless of whether Customer is entitled to reimbursement for such costs from its or some other person's or entity's insurance carrier.

The prevailing party in any arbitration or litigation arising out of or related to this Contract shall, in addition to such other relief as may be awarded, be entitled to recover reasonable legal fees and expenses it incurred in that proceeding from the non prevailing party.

CUSTOMER

BY: _____

NAME: _____

TITLE: _____

DATE: _____

BLACKMON MOORING OF AUSTIN, LLC

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Emergency Response and Service Contract
Revised 08/25/06