

**NOTICE OF REGULAR MEETING OF BOARD OF DIRECTORS OF
BASTROP ECONOMIC DEVELOPMENT CORPORATION (BEDC)
Monday, February 24, 2020 – 4:30 P.M.
Bastrop City Hall, 1311 Chestnut Street, Bastrop, Texas**

1. CALL TO ORDER

The Bastrop EDC Board reserves the right to convene into Executive Session at any time during the meeting regarding any agenda item in compliance with the Texas Open Meetings Act, Chapter 551 Government Code.

2. PHOTOS OF BEDC BOARD MEMBERS

3. PUBLIC COMMENT(S)

4. REGULAR BUSINESS & PRESENTATIONS

- 4.1. Approval of meeting minutes from the Bastrop EDC Regular Board Meeting of December 16, 2019, Joint Meeting with City Council of January 15, 2020, and Board Meeting and Retreat of January 27, 2020. **(page 3)**
- 4.2. Acceptance of the Bastrop EDC’s financial summary reports for periods ending November 30, 2019, December 31, 2019, and January 31, 2020. **(page 8)**
- 4.3. Update on 921 Main Street Building from Project Manager Jimmy Crouch. **(page 49)**
- 4.4. Consideration, discussion and possible action to approve Resolution R-2020-05 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into its annual industry partnership with Opportunity Austin. **(page 50)**
- 4.5. Consideration, discussion and possible action to approve Resolution R-2020-06 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into an amended contract with Place Designers, Inc. **(page 55)**
- 4.6. Consideration, discussion and possible action to approve Resolution R-2020-07 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with Capital Geotechnical Services PLLC for geotechnical services for the 921 Main Street Project. **(page 74)**
- 4.7. Consideration, discussion and possible action to approve Resolution R-2020-08 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer and the City of Bastrop Finance Director to make decisions regarding the movement of reserve funds located in certificates of deposit and money market accounts. **(page 82)**
- 4.8. Consideration, discussion and possible action to approve Resolution R-2020-09 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into an AIA construction contract with Sabre Commercial for general contractor services for the 921 Main Street Project with a guaranteed maximum price to be determined. **(page 85)**
- 4.9. Consideration, discussion and possible action to approve Resolution R-2020-10 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to promote “Film Bastrop” at the 2020 SXSW event. **(page 179)**

- 4.10. Update on EDC staff activities for past month (e.g., marketing, prospects, projects, events, and other updates). (page 217)

5. EXECUTIVE SESSION

- 5.1. The Bastrop EDC Board of Directors will meet in a closed/executive session pursuant to the Texas Government Code, Chapter 551, to discuss the following:
- (1) **Section 551.071** Consultation with Attorney and **Sections 551.072 & 551.087** Deliberation regarding the commercial or financial information, as well as the purchase, exchange, lease, or value of real property received on 921 Main Street Project – to include Project Paint by Number, 921 Main Street Project, Stone Development Group, and Sabre Commercial
 - (2) **Section 551.071** Consultation with Attorney and **Sections 551.072 & 551.087** Deliberation regarding the commercial or financial information, as well as the purchase, exchange, lease, or value of real property received on potential projects – Project Charlotte, Project Bob Pole, Project Greenport, and Project Westworld
 - (3) **Section 551.071** Consultation with Attorney and **Section 551.074** Discussion and deliberation with Chief Executive Officer regarding Policies and Procedures and Personnel Matters
- 5.2. The Bastrop EDC Board of Directors will reconvene into open session to discuss, consider and/or take any action necessary related to the executive sessions noted herein.

6. ADJOURNMENT

CERTIFICATE

I, Kathy Merrifield, EDC Office Manager of the Bastrop Economic Development Corporation (Bastrop EDC), certify that this Notice of Meeting was posted on the front window of the Bastrop EDC offices, 301 Hwy 71 W., Suite 214, at the Bastrop City Hall, 1311 Chestnut Street, and on the Bastrop EDC's website on this the 21st of February 2020 at 3:00 p.m. Copies of this agenda have been provided to those members of the media requesting such information.

Kathy Merrifield

Kathy Merrifield, BEDC Office Manager

THE BASTROP ECONOMIC DEVELOPMENT CORPORATION IS COMMITTED TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT. REASONABLE MODIFICATIONS AND EQUAL ACCESS WILL BE PROVIDED UPON REQUEST. PLEASE CALL 512-303-9700.

Agenda Item: 4.1

AGENDA MEMORANDUM

Meeting Date: February 24, 2020

Agenda Item: Approval of meeting minutes from the Bastrop EDC Regular Board Meeting of December 16, 2019, Joint Meeting with City Council of January 15, 2020, and Board Meeting and Retreat of January 27, 2020.

Prepared by: Kathy Merrifield, Office Manager

The draft minutes from the last three BEDC board meetings are attached.

Attachments:

Draft minutes from the Regular Board Meeting of December 16, 2019

Draft minutes from the Joint Meeting with City Council of January 15, 2020

Draft minutes from the Board Meeting and Retreat of January 27, 2020

Recommendation – Approve the three sets of meeting minutes as submitted.

[RECOMMENDED MOTION] – I move to approve the three sets of meeting minutes as submitted.



BASTROP ECONOMIC DEVELOPMENT CORPORATION (BEDC)
BOARD OF DIRECTORS
Minutes of Monthly Meeting, December 16, 2019
Bastrop City Hall, 1311 Chestnut Street, Bastrop, Texas

The Bastrop Economic Development Corporation (BEDC) met on Monday, December 16, 2019, at 5:00 p.m. at Bastrop City Hall, 1311 Chestnut Street, for a Monthly Meeting. Board members present: Kathryn Nash, Kevin Plunkett, Connie Schroeder, Ron Spencer, and Pat Crawford. Board members Sam Kier and Jeff Haladyna were not present. Staff members present: Cameron Cox, Angela Ryan, Jean Riemenschneider, and Kathy Merrifield. BEDC Attorney Robyn Katz was in attendance.

1. **CALL TO ORDER** – Board Chair Kathryn Nash called the Board Meeting to order at 5:00 p.m.
2. **PUBLIC COMMENT(S)** – There were no public comments.
3. **REGULAR BUSINESS & PRESENTATIONS**
 - 3.1. Approval of meeting minutes from the Bastrop EDC Regular Board Meeting of November 18, 2019. Mr. Plunkett made the motion to approve the minutes as submitted, Mr. Spencer seconded, and the motion passed.
 - 3.2. Acceptance of the Bastrop EDC's financial summary reports for periods ending September 30, 2019, October 31, 2019, and November 30, 2019. (Note: November's financials were not available at the time the packet was prepared.) Mr. Plunkett made the motion to accept the September and October BEDC financials as submitted, Ms. Crawford seconded, and the motion passed.
 - 3.3. Update on 921 Main Street Building from Project Manager Jimmy Crouch. Mr. Crouch began his updates but the Board requested to go into Executive Session.
 - 3.4. Consideration, discussion and possible action to approve Resolution R-2019-0025 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with Golden Shovel to develop BEDC's website. Mr. Plunkett made the motion to approve the first phase of the contract and Mr. Spencer seconded. Attorney Katz commented that the not to exceed amount on the Resolution was transposed and read \$34,900 instead of \$39,400. Mr. Plunkett amended his motion for Resolution R-2019-0025 to include the correct amount of \$39,400, Ms. Schroeder seconded, and the motion passed.
 - 3.5. Consideration, discussion and possible action to approve Resolution R-2019-0026 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with The Retail Coach to attract new retail to Bastrop. Mr. Spencer made the motion to approve Resolution R-2019-0026, Ms. Crawford seconded, and the motion passed.
 - 3.6. Consideration, discussion and possible action to approve Resolution R-2019-0027 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with Site Location Partnership to continue our partnership for site selectors. Mr. Spencer made the motion to approve Resolution R-2019-0027, Mr. Plunkett seconded, and the motion passed.
 - 3.7. Consideration, discussion and possible action to approve Resolution R-2019-0028 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with The Highland Group to conduct a downtown boutique hotel study with the

BEDC and the City of Bastrop. Mr. Plunkett made the motion to approve Resolution R-2019-0028, Mr. Spencer seconded, and the motion passed.

- 3.8. Update on Industrial Park drainage plan with Bowman Consulting. No action was necessary.
- 3.9. Update on EDC staff activities for past month (e.g., marketing, prospects, projects, events, and other updates). Mr. Cox presented staff updates. No action was necessary.

4. EXECUTIVE SESSION

4.1. At 5:10 p.m., the Bastrop EDC Board of Directors met in a closed/executive session pursuant to the Texas Government Code, Chapter 551, to discuss the following:

- (1) **Section 551.071** Consultation with Attorney and **Sections 551.072 & 551.087** Deliberation regarding the commercial or financial information, as well as the purchase, exchange, lease, or value of real property received on potential projects – Project Paint by Number and 921 Main Street Project.

4.2. At 5:52 p.m., the Bastrop EDC Board of Directors reconvened into open session to discuss, consider and/or take any action necessary related to the executive sessions noted herein. There were two motions resulting from Executive Session. Mr. Plunkett made the motion to give the Executive Director authority to mutually terminate the existing contract with Stone Development, Ms. Schroeder seconded, and the motion passed. Ms. Crawford made the motion to give the Executive Director authority to enter into a contract for the completion of the construction at 921 Main Street, Ms. Schroeder seconded, and the motion passed.

5. ADJOURNMENT – Board Chair Kathryn Nash adjourned the meeting at 6:30 p.m.

APPROVED: _____
Kathryn Nash, Board Chair

ATTEST: _____
Kathy Merrifield, Office Manager

**BASTROP ECONOMIC DEVELOPMENT CORPORATION (BEDC)
BOARD OF DIRECTORS
Minutes of Joint Meeting with Bastrop City Council, January 15, 2020
Bastrop City Hall, 1311 Chestnut Street, Bastrop, Texas**

The Bastrop Economic Development Corporation (BEDC) met in a Joint Workshop Meeting with Bastrop City Council on Wednesday, January 15, 2020, beginning at 4:30 p.m., at Bastrop City Hall, 1311 Chestnut Street.

Members of City Council present: Mayor Connie Schroeder, Mayor Pro Tem Lyle Nelson, and Council Members Dock Jackson, Bill Ennis, Drusilla Rogers and Bill Peterson. City officers present: City Manager Lynda Humble and City Secretary Ann Franklin.

BEDC Board members present: Kathryn Nash, Kevin Plunkett, Sam Kier, Ron Spencer and Jeff Haladyna. (Mayor Schroeder also serves on the BEDC Board.) Board member Pat Crawford was absent. BEDC Staff members present: CEO Cameron Cox, Angela Ryan, Jean Riemenschneider, and Kathy Merrifield.

1. CALL TO ORDER

- a. Mayor Schroeder called the meeting of the Bastrop City Council to order with a quorum being present at 4:30 p.m.
- b. Chair Kathryn Nash called the meeting of the Bastrop Economic Development Corporation to order with a quorum being present at 4:31 p.m.

2. WORKSHOP SESSION

Receive strategic report summary from Jay Garner with Garner Economics setting forth the strategic plan for the Bastrop Economic Development Corporation, and discussion regarding implantation of report and strategic plan. Presentation was made by Garner Economics' Jay Garner, President & Founder, and Cyndi Dancy, Research Director.

3. ADJOURNMENT

- a. Mayor Schroeder adjourned the Bastrop City Council meeting at 5:59 p.m. without objection.
- b. BEDC Board Chair Kathryn Nash adjourned the Bastrop Economic Development Corporation meeting at 5:59 p.m.

APPROVED: _____
Kathryn Nash, Board Chair

ATTEST: _____
Kathy Merrifield, Office Manager

**BASTROP ECONOMIC DEVELOPMENT CORPORATION (BEDC)
BOARD OF DIRECTORS
Minutes of Monthly Meeting & Board Retreat, January 27, 2020
BEDC Office, 301 Hwy 71 W., Suite 214, Bastrop, Texas**

The Bastrop Economic Development Corporation (BEDC) met on Monday, January 27, 2020, at 12:00 noon at the BEDC office, 301 Hwy 71 W., Suite 214, for a Monthly Meeting and Board Retreat. Board members present: Kathryn Nash, Kevin Plunkett, Sam Kier, Connie Schroeder, and Jeff Haladyna. Pat Crawford was in attendance during the first portion of the meeting. Board member Ron Spencer was not present. Staff members present: Cameron Cox, Angela Ryan, Jean Riemenschneider, and Kathy Merrifield. BEDC Attorney Robyn Katz attended most of the meeting.

1. **CALL TO ORDER** – Board Chair Kathryn Nash called the Board Meeting to order at 12:02 p.m.
2. **PUBLIC COMMENT(S)** – There were no public comments.
3. **BOARD RETREAT ITEMS FOR DISCUSSION**
 - 3.1. Consideration, discussion and possible action to approve Resolution R-2020-01 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with Place Designers, Inc. Mr. Plunkett made the motion to approve Resolution R-2020-01, Mr. Haladyna seconded, and the motion passed.
 - 3.2. Consideration, discussion and possible action to approve Resolution R-2020-02 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with Danny Charbonneau. Mr. Kier made the motion to approve Resolution R-2020-02, Mr. Plunkett seconded, and the motion passed.
 - 3.3. Consideration, discussion and possible action to approve Resolution R-2020-03 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with Sabre Commercial, Inc. Mr. Kier made the motion to approve Resolution R-2020-03, with the change that the CEO have the authority to negotiate a contract instead of enter into a contract. Mr. Plunkett seconded, and the motion passed.
 - 3.4. Consideration, discussion and possible action to approve Resolution R-2020-04 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with Flyer View Group, LLC. Ms. Schroeder made the motion to approve R-2020-04, Mr. Kier seconded, and the motion passed.
 - 3.5. Presentation, discussion and possible action concerning the BEDC’s strategic plan, vision and mission statement, brand and logo, bylaws, policies and procedures, and website. The Board members discussed the results of the Strategic Plan and prioritized the action items. They then discussed the design of the new website, edits to the BEDC’s bylaws and policies & procedures, and established a new mission statement: “The Bastrop Economic Development Corporation welcomes you to the next frontier of development for Central Texas.”
4. **ADJOURNMENT** – Board Chair Kathryn Nash adjourned the meeting at 4:38 p.m.

APPROVED: _____
Kathryn Nash, Board Chair

ATTEST: _____
Kathy Merrifield, Office Manager

AGENDA MEMORANDUM

Meeting Date: February 24, 2020

Agenda Item: Acceptance of the Bastrop EDC's financial summary reports for periods ending November 30, 2019, December 31, 2019, and January 31, 2020.

Prepared by: BEDC Staff

Attached for the Board's review and consideration are the BEDC financial summary reports for the periods ending November 30, 2019, December 31, 2019, and January 31, 2020.

Attachments:

Financial Summary Report for period ending November 30, 2019

Financial Summary Report for period ending December 31, 2019

Financial Summary Report for period ending January 31, 2020

Recommendation – Accept financial summary reports as submitted.

[RECOMMENDED MOTION] – I move to accept the BEDC financial summary reports as submitted.



Bastrop Economic Development Corporation

Financial Summary For Period Ending November 2019



Summary of Revenues and Expenditures

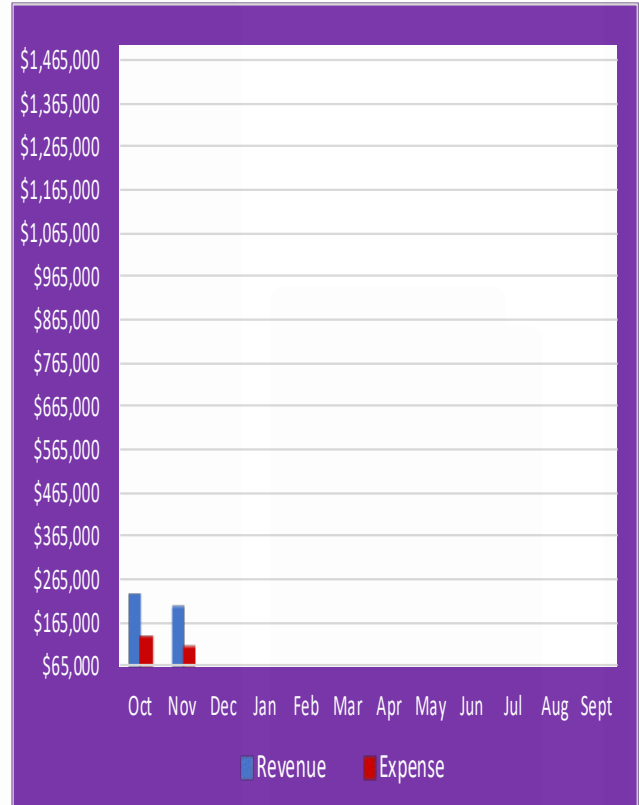
As of November 30, 2019



OVERALL FUND PERFORMANCE

REVENUES VS EXPENSES

Month	FY2020 Revenue	FY2020 Expense	Monthly Variance
Oct	\$ 227,085	\$ 128,658	\$ 98,427
Nov	198,030	109,017	\$ 89,013
Dec			\$ -
Jan			\$ -
Feb			\$ -
Mar			\$ -
Apr			\$ -
May			\$ -
Jun			\$ -
Jul			\$ -
Aug			\$ -
Sept			\$ -
Total	\$ 425,115	\$ 237,675	\$ 187,440



Positive

The revenue is in line with projections. The expenses are low due to salary vacancies and slower spending pattern.



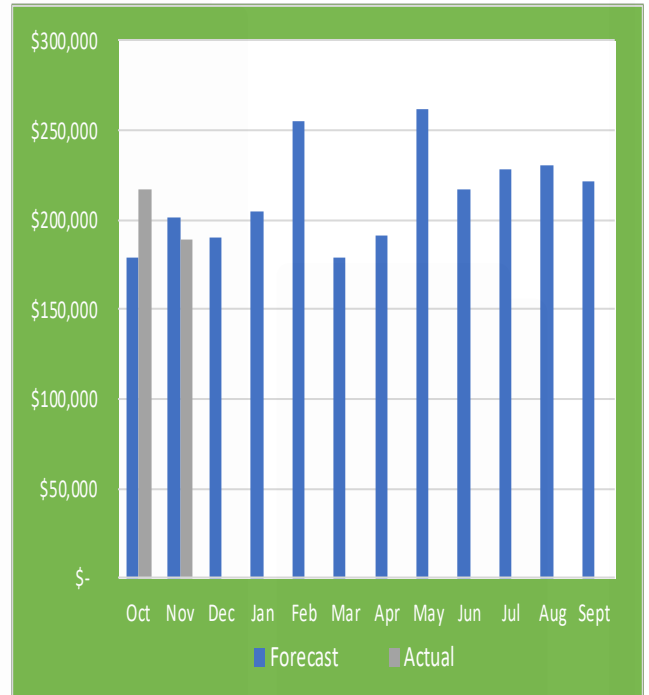
02/21/2020
Summary of Sales Tax Revenue
 As of November 30, 2019



REVENUE ANALYSIS

SALES TAX REVENUE

<u>Month</u>	<u>FY2020 Forecast</u>	<u>FY2020 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 178,902	\$ 217,223	\$ 38,321
Nov	201,052	189,029	\$ (12,023)
Dec	190,167		
Jan	204,421		
Feb	255,525		
Mar	178,867		
Apr	191,645		
May	262,161		
Jun	217,197		
Jul	228,184		
Aug	229,973		
Sept	221,906		
Total	\$ 2,560,000	\$ 406,252	\$ 26,298
Forecast YTD	\$ 379,954		
Actual to Forecast	\$ 26,298	6.9%	



Positive

Sales Tax revenue is 75% of total revenue (excluding loan proceeds). The amount in Oct. and Nov. are estimated due to the timing of receiving the payments. The State Comptroller has a two month lag between month earned and month distributed. The Actual to forecast year to date is a positive 7%. This budget was conservative due to the volatility of this revenue source.



Expenditures Budget to Actual Comparison

As of November 30, 2019



OPERATING EXPENDITURES COMPARISON

<u>Category</u>	<u>FY2020 Forecast</u>	<u>FY2020 Actual</u>	<u>Monthly Variance</u>
Personnel	\$ 77,548	\$ 53,582	\$ 23,966
Supplies & Material	3,105	135	\$ 2,970
Maintenance & Repairs	4,440	827	\$ 3,613
Occupancy	9,000	7,458	\$ 1,542
Contractual Service	63,415	27,223	\$ 36,192
Marketing/Advertising	66,142	41,247	\$ 24,895
Contingency	-	-	\$ -
Debt Service	-	-	\$ -
Total	\$ 223,650	\$ 130,472	\$ 93,178
Forecast to Actual %	41.66%		

Positive

The forecast to actual comparison is a positive 42% year-to-date.



Expenditures Budget to Actual Comparison

As of November 30, 2019



CAPITAL OUTLAY PROJECTS

<u>Project</u>	<u>FY2020 Budget</u>	<u>FY2020 Actual</u>	<u>Budget Balance</u>
Trail System Downtown Loop (only engineering and permitting expenses so far)	\$ 140,000	\$ 10,500	\$ 129,500
Bus. Ind. Park-Tech/MLK Infra (only engineering expenses so far)	1,132,000	2,520	\$ 1,129,480
921 Main St. Project Engineering & Constr	1,420,000	96,703	\$ 1,323,297
Total	\$ 2,692,000	\$ 109,723	\$ 2,582,277

These projects are funded by various funds including 2013 Bond funds, operating funds and 2018 Bond funds. The 921 Main St. Project was funded through a loan.





BASTROP ECONOMIC DEVELOPMENT CORPORATION FUND FY 2019-2020 BUDGET

Working Capital 9-30-2019

\$ 5,109,097

FY 2019-2020

Budgeted

Revenues \$ 4,213,800

Total FY 2018 Resources \$ 9,322,897

Budgeted Expenditures:

Operating Expenses \$ (2,066,446)

Capital Expenses \$ (2,692,000)

Debt Service \$ (485,453)

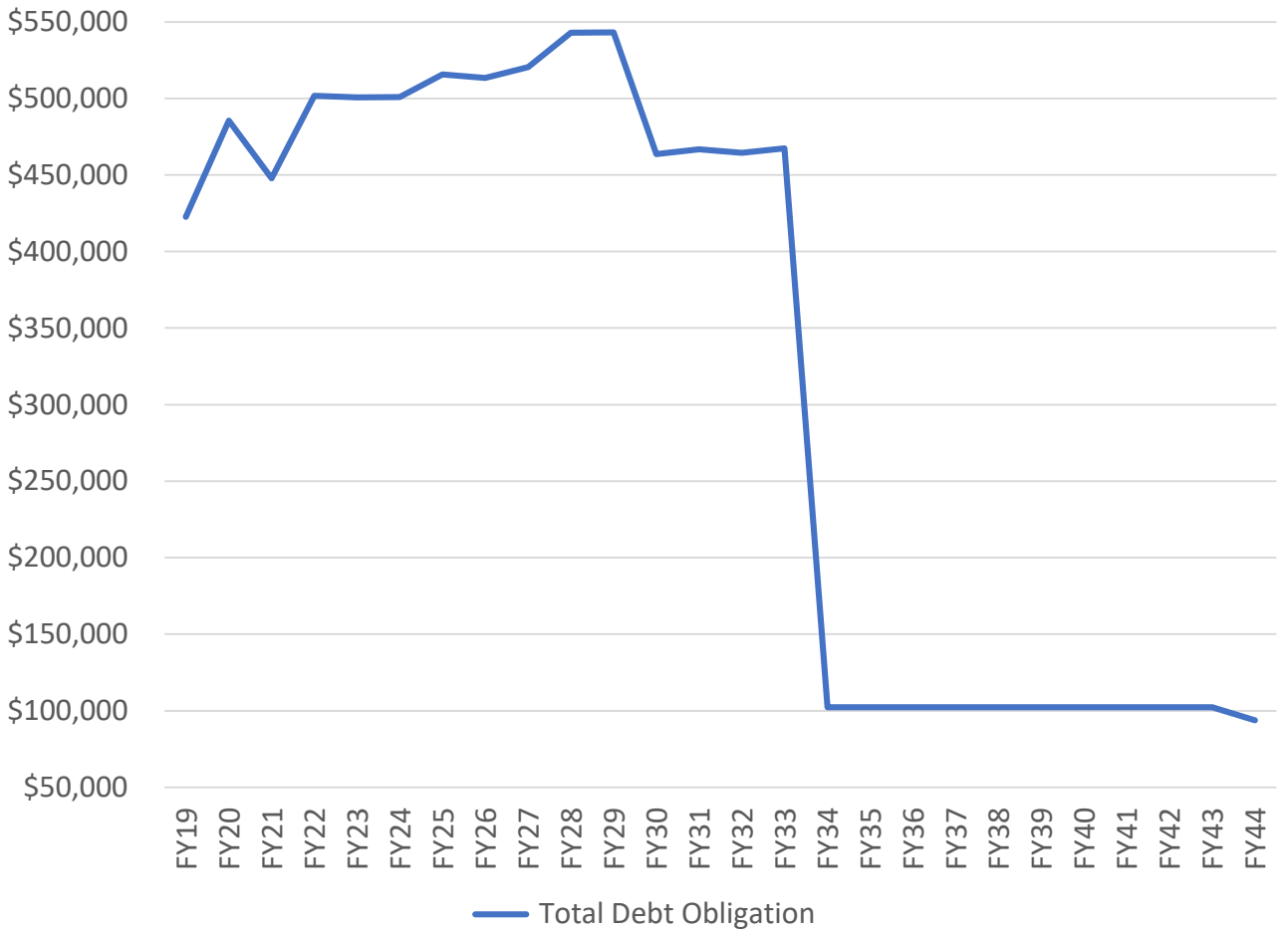
\$ (5,243,899)

Projected Working Capital Balance 09-30-2020 \$ 4,078,998

Reserve 25% of Operating Expense \$ 516,612



Total Debt Obligation



BEDC Financial Statements attached

CITY OF BASTROP
FINANCIAL STATEMENT
AS OF: NOVEMBER 30TH, 2019

601-BASTROP E.D.C. FUND

REVENUES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>TAXES & PENALTIES</u>						
00-00-4005 SALES TAX	<u>372,994.89</u>	<u>2,560,000.00</u>	<u>189,028.55</u>	<u>406,251.67</u>	<u>2,153,748.33</u>	<u>15.87</u>
TOTAL TAXES & PENALTIES	372,994.89	2,560,000.00	189,028.55	406,251.67	2,153,748.33	15.87
<u>CHARGES FOR SERVICES</u>						
00-00-4047 LEASE AGREEMENT	<u>2,300.00</u>	<u>13,800.00</u>	<u>1,150.00</u>	<u>2,300.00</u>	<u>11,500.00</u>	<u>16.67</u>
TOTAL CHARGES FOR SERVICES	2,300.00	13,800.00	1,150.00	2,300.00	11,500.00	16.67
<u>OTHER REVENUE</u>						
<u>INTEREST INCOME</u>						
00-00-4400 INTEREST INCOME	20,781.80	80,000.00	7,851.44	16,563.79	63,436.21	20.70
00-00-4401 INTEREST RECEIVED ON NOTES	<u>51.79</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL INTEREST INCOME	20,833.59	80,000.00	7,851.44	16,563.79	63,436.21	20.70
<u>MISCELLANEOUS</u>						
00-00-4524 RENTAL INCOME	<u>0.00</u>	<u>40,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>40,000.00</u>	<u>0.00</u>
TOTAL MISCELLANEOUS	0.00	40,000.00	0.00	0.00	40,000.00	0.00
<u>TRANSFERS-IN</u>						
<u>OTHER SOURCES</u>						
00-00-4805 GAIN/LOSS ON SALE OF FIXED AS	0.00	100,000.00	0.00	0.00	100,000.00	0.00
00-00-4810 BOND PROCEEDS	<u>0.00</u>	<u>1,420,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,420,000.00</u>	<u>0.00</u>
TOTAL OTHER SOURCES	<u>0.00</u>	<u>1,520,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,520,000.00</u>	<u>0.00</u>
** TOTAL REVENUE **	396,128.48	4,213,800.00	198,029.99	425,115.46	3,788,684.54	10.09

CITY OF BASTROP
FINANCIAL STATEMENT
AS OF: NOVEMBER 30TH, 2019

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
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DUE TO/FROM
=====

00-NON-PROGRAM
=====

BEDC ADMINISTRATION
=====

00-NON-PROGRAM
=====

PERSONNEL COSTS

70-00-5101 BEDC OPERATIONAL SALARIES	40,967.85	373,625.00	18,053.80	40,615.68	333,009.32	10.87
70-00-5116 LONGEVITY	579.00	705.00	0.00	20.25	684.75	2.87
70-00-5150 SOCIAL SECURITY	3,129.37	28,669.00	438.73	2,082.81	26,586.19	7.27
70-00-5151 RETIREMENT	4,793.36	42,973.00	2,114.01	4,724.33	38,248.67	10.99
70-00-5155 GROUP INSURANCE	5,628.63	43,479.00	2,675.59	6,014.26	37,464.74	13.83
70-00-5156 WORKER'S COMPENSATION	<u>93.54</u>	<u>701.00</u>	<u>0.00</u>	<u>125.00</u>	<u>576.00</u>	<u>17.83</u>
TOTAL PERSONNEL COSTS	55,191.75	490,152.00	23,282.13	53,582.33	436,569.67	10.93

SUPPLIES & MATERIALS

70-00-5201 OPERATIONAL SUPPLIES (OFFIC	493.96	7,000.00	0.00	135.05	6,864.95	1.93
70-00-5203 POSTAGE	0.00	360.00	0.00	0.00	360.00	0.00
70-00-5206 OFFICE EQUIPMENT	<u>3,836.11</u>	<u>15,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>15,000.00</u>	<u>0.00</u>
TOTAL SUPPLIES & MATERIALS	4,330.07	22,360.00	0.00	135.05	22,224.95	0.60

MAINTENANCE & REPAIRS

70-00-5301 MAINT OF EQUIPMENT	0.00	1,000.00	0.00	0.00	1,000.00	0.00
70-00-5331 INDUSTRIAL PARK MAINT EXP	2,900.00	20,200.00	200.00	200.00	20,000.00	0.99
70-00-5345 BUILDING REPAIRS & MAINT.	<u>675.00</u>	<u>5,000.00</u>	<u>250.00</u>	<u>627.00</u>	<u>4,373.00</u>	<u>12.54</u>
TOTAL MAINTENANCE & REPAIRS	3,575.00	26,200.00	450.00	827.00	25,373.00	3.16

OCCUPANCY

70-00-5401 COMMUNICATIONS	1,674.78	9,000.00	0.00	167.19	8,832.81	1.86
70-00-5402 OFFICE RENTAL	9,900.00	42,000.00	3,500.00	7,000.00	35,000.00	16.67
70-00-5403 UTILITIES	<u>189.61</u>	<u>3,000.00</u>	<u>0.00</u>	<u>290.79</u>	<u>2,709.21</u>	<u>9.69</u>
TOTAL OCCUPANCY	11,764.39	54,000.00	3,500.00	7,457.98	46,542.02	13.81

FINANCIAL STATEMENT

AS OF: NOVEMBER 30TH, 2019

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>CONTRACTUAL SERVICES</u>						
70-00-5505 PROFESSIONAL SERVICES	10,438.01	140,000.00	2,699.00	3,349.00	136,651.00	2.39
70-00-5518 AUDIT	0.00	10,000.00	0.00	0.00	10,000.00	0.00
70-00-5525 LEGALS	1,465.00	30,000.00	0.00	0.00	30,000.00	0.00
70-00-5526 LEGAL PROJECTS	526.50	15,000.00	0.00	0.00	15,000.00	0.00
70-00-5530 ENGINEERING	0.00	15,000.00	0.00	0.00	15,000.00	0.00
70-00-5540 PROPERTY INSURANCE	257.20	4,974.00	0.00	3,940.30	1,033.70	79.22
70-00-5548 RENTAL -921 MAIN ST EXPENSE	0.00	4,576.00	0.00	0.00	4,576.00	0.00
70-00-5561 CONTRACTUAL SERVICES	10,874.04	0.00	0.00	0.00	0.00	0.00
70-00-5574 CITY PROJECTS & PROGRAMS	0.00	49,950.00	0.00	0.00	49,950.00	0.00
70-00-5575 CITY SHARED SERVICES	0.00	7,500.00	0.00	0.00	7,500.00	0.00
70-00-5580 BIP TECHNOLOGY/MLK INFRASTR	43,000.00	103,200.00	0.00	8,600.00	94,600.00	8.33
70-00-5596 MAIN STREET PROG SUPPORT	8,333.34	50,000.00	4,166.67	8,333.34	41,666.66	16.67
70-00-5598 CITY ADMINISTRATIVE SUPPORT	<u>3,000.00</u>	<u>18,000.00</u>	<u>1,500.00</u>	<u>3,000.00</u>	<u>15,000.00</u>	<u>16.67</u>
TOTAL CONTRACTUAL SERVICES	77,894.09	448,200.00	8,365.67	27,222.64	420,977.36	6.07
<u>OTHER CHARGES</u>						
70-00-5603 MARKETING TRAVEL	3,765.96	28,000.00	0.00	0.00	28,000.00	0.00
70-00-5604 BUSINESS DEVELOPMENT	344.11	8,000.00	49.44	121.32	7,878.68	1.52
70-00-5605 TRAINING TRAVEL	6,690.22	20,000.00	0.00	1,908.58	18,091.42	9.54
70-00-5606 AUTO ALLOWANCE - STAFF	263.96	7,200.00	230.77	230.77	6,969.23	3.21
70-00-5615 DUES, SUBSCRIPTIONS & PUBLI	2,939.49	24,000.00	0.00	5,100.34	18,899.66	21.25
70-00-5631 BONDS FOR BEDC OFFICERS	966.00	1,000.00	0.00	885.50	114.50	88.55
70-00-5633 LOCAL/MISC ADV & SPONSORSHI	633.00	25,000.00	0.00	0.00	25,000.00	0.00
70-00-5634 NATIONAL/REG ADV & MARKETIN	535.00	48,000.00	1,171.76	7,197.02	40,802.98	14.99
70-00-5636 DIGITAL ADV & MARKETING	0.00	40,000.00	0.00	0.00	40,000.00	0.00
70-00-5637 SPECIAL ADV & MARKETING	0.00	25,000.00	0.00	15,200.00	9,800.00	60.80
70-00-5640 SPL PROJ-REDEVELOPMENT GRAN	0.00	50,000.00	0.00	0.00	50,000.00	0.00
70-00-5641 SPL EDUC & WORKFORCE DEVELO	10,294.85	30,000.00	0.00	10,603.70	19,396.30	35.35
70-00-5642 SPL ENTREPRENEURIAL/SM BUS	0.00	20,000.00	0.00	0.00	20,000.00	0.00
70-00-5643 SPL RETAIL RECRUITING	7,250.00	20,000.00	0.00	0.00	20,000.00	0.00
70-00-5644 380 AGREEMENT REIMBURSEMENT	0.00	385,000.00	0.00	0.00	385,000.00	0.00
70-00-5645 WATER RIGHTS PROP FUNDING	0.00	60,000.00	0.00	0.00	60,000.00	0.00
70-00-5646 LAND/GRANT REBATES	0.00	9,334.00	0.00	0.00	9,334.00	0.00
70-00-5650 SPL PRJT BUS RETEN & EXPAN	0.00	5,000.00	0.00	0.00	5,000.00	0.00
70-00-5689 OPPORTUNITY AUSTIN	0.00	10,000.00	0.00	0.00	10,000.00	0.00
70-00-5690 CASH INCENTIVE	0.00	150,000.00	0.00	0.00	150,000.00	0.00
70-00-5691 CLOSING COSTS	<u>0.00</u>	<u>35,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>35,000.00</u>	<u>0.00</u>
TOTAL OTHER CHARGES	33,682.59	1,000,534.00	1,451.97	41,247.23	959,286.77	4.12

CITY OF BASTROP
FINANCIAL STATEMENT
AS OF: NOVEMBER 30TH, 2019

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>CONTINGENCY</u>						
70-00-5900 CONTINGENCY	0.00	25,000.00	0.00	0.00	25,000.00	0.00
TOTAL CONTINGENCY	0.00	25,000.00	0.00	0.00	25,000.00	0.00
<u>CAPITAL OUTLAY</u>						
70-00-6713 TRAIL SYS FROM ESKEW TO HWY	805.00	140,000.00	6,000.00	10,500.00	129,500.00	7.50
70-00-6714 921 MAINSTREET PROJECT	0.00	1,420,000.00	65,967.00	96,703.00	1,323,297.00	6.81
70-00-6715 BIP TECHNOLOGY/MLK INFRASTR	1,486.25	1,132,000.00	0.00	0.00	1,132,000.00	0.00
70-00-6716 AGNES/HOME DEPOT INFRASTRU	713.05	0.00	0.00	0.00	0.00	0.00
TOTAL CAPITAL OUTLAY	1,578.20	2,692,000.00	71,967.00	107,203.00	2,584,797.00	3.98
<u>DEBT SERVICE</u>						
70-00-7133 C OF O SERIES 2013 PRINCIPL	0.00	79,000.00	0.00	0.00	79,000.00	0.00
70-00-7134 C OF O SERIES 2013 INTEREST	0.00	91,429.00	0.00	0.00	91,429.00	0.00
70-00-7137 C OF O SERIES 2010 PRINCIPA	0.00	49,968.00	0.00	0.00	49,968.00	0.00
70-00-7138 C OF O SERIES 2010 INTEREST	0.00	6,152.00	0.00	0.00	6,152.00	0.00
70-00-7156 GO REFUNDING 2017-INT	0.00	20,000.00	0.00	0.00	20,000.00	0.00
70-00-7603 BOND 2006 - PRINC	0.00	55,000.00	0.00	0.00	55,000.00	0.00
70-00-7604 BOND 2006 - INT	0.00	3,080.00	0.00	0.00	3,080.00	0.00
70-00-7605 BOND PRINCIPAL 2018	0.00	70,000.00	0.00	0.00	70,000.00	0.00
70-00-7606 BOND INTEREST 2018	0.00	40,341.00	0.00	0.00	40,341.00	0.00
70-00-7608 ROSCOE LOAN 2019 - INTEREST	0.00	70,482.60	0.00	0.00	70,482.60	0.00
TOTAL DEBT SERVICE	0.00	485,452.60	0.00	0.00	485,452.60	0.00
TOTAL 00-NON-PROGRAM	188,016.09	5,243,898.60	109,016.77	237,675.23	5,006,223.37	4.53
ADMINISTRATION =====						
<u>CAPITAL OUTLAY</u>						
<u>DEBT SERVICE</u>						
TOTAL BEDC ADMINISTRATION	188,016.09	5,243,898.60	109,016.77	237,675.23	5,006,223.37	4.53
*** TOTAL EXPENSES ***	188,016.09	5,243,898.60	109,016.77	237,675.23	5,006,223.37	4.53

*** END OF REPORT ***

AS OF: NOVEMBER 30TH, 2019

601-BASTROP E.D.C. FUND

ACCOUNT# TITLE

ASSETS
=====

00-00-1010	BEDC OPERATING ACCT	163,838.72
00-00-1012	TEXAS CLASS	2,065,187.94
00-00-1100	TEXPOOL	2,676,916.61
00-00-1135	DREYFUS MM ACCT	2,489.10
00-00-1141	CERTIFICATE OF DEPOSIT FN	553,000.00
00-00-1224	ACCT RECEIVABLE-SALES TAX	404,291.55
00-00-1227	ACCOUNTS RECEIVABLE-OTHER	8,333.32
00-00-1420	EQUIPMENT	8,300.77
00-00-1460	FIXED ASSETS - BUILDING	845,593.73
00-00-1470	FIXED ASSETS - LAND	525,748.31
00-00-1480	FIXED ASSETS - INFRASTRUC	0.18
00-00-1490	CONST IN PROGRESS-INFRAST	2,012,118.74
00-00-1499	ACCUMULATED DEPRECIATION(348,389.28)
00-00-1570	DEFERRED OUTFLOW-CITY OPE	1,702.00
00-00-1575	DEFERRED OUTFLOWS-PENSION	20,827.00
00-00-1576	DEFERRED OUTFLOWS-ACTUARI	4,839.00
00-00-1578	DEFERRED OUTFLOWS-ASSUMPT	1,268.00
00-00-1579	DEFERRED OUTFLOW-TMRS OPE	679.00
00-00-1587	PREPAID EXPENSES	<u>15,793.78</u>

8,962,538.47

TOTAL ASSETS

8,962,538.47
=====

AS OF: NOVEMBER 30TH, 2019

601-BASTROP E.D.C. FUND

ACCOUNT# TITLE

LIABILITIES & FUND BALANCE
=====

00-00-2000	ACCOUNTS PAYABLE	59,600.30	
00-00-2039	RETAINAGE PAYABLES	28,357.30	
00-00-2080	NOTES PAYABLE-CITY-WTR PR	240,000.00	
00-00-2101	BONDS PAYABLE CURRENT POR	313,968.00	
00-00-2103	TAX/REV BOND SERIES 2018	1,120,000.00	
00-00-2125	ACCRUED INTEREST PAYABLE	24,886.16	
00-00-2127	ACCRUED EXPENSES-TMRS OPE	48,976.41	
00-00-2235	UNEARNED REVENUE-TOWER	11,500.00	
00-00-2346	DUE TO CLEARING FUND	60,435.61	
00-00-2356	DUE TO OTHER GOVERNMENTS	2,871,450.44	
00-00-2370	DEFERRED INFLOW-CITY OPEB	1,926.00	
00-00-2376	DEFERRED INFLOW-ACTUARIAL	14,877.00	
00-00-2405	ENCUMBRANCE ACCOUNT	(1,711,648.77)	
00-00-2406	RESERVE FOR ENCUMBRANCE	1,711,648.77	
00-00-2407	PRIOR YR ENCUMBRANCE ACCT	10,839.78	
00-00-2408	PR YR RESERV FOR ENCUMBR(10,839.78)	
00-00-2850	NET PENSION LIABLITY	84,229.00	
00-00-2870	COMPENSATED ABSENCES PAYA	<u>12,027.20</u>	
			<u>4,892,233.42</u>
TOTAL LIABILITIES			4,892,233.42
	SURPLUS (DEFICIT)	187,440.23	
00-00-3000	NET ASSETS	3,093,708.91	
00-00-3119	DESIGNATED OPERATING	150,000.00	
00-00-3400	CONTRIBUTED CAPITAL	521,695.50	
00-00-3506	RESTRICTED-ELLIOTT PARTN(0.01)	
00-00-3507	RESTRICTED - AEI TECHNOLO	9,333.00	
00-00-3510	RESTRICTED-RESERVE 2018 B	<u>108,127.42</u>	
TOTAL EQUITY			<u>4,070,305.05</u>
TOTAL LIABILITIES & FUND EQUITY			<u>8,962,538.47</u> =====

Bastrop Economic Development Corporation

Financial Summary For Period Ending December 2019



Summary of Revenues and Expenditures

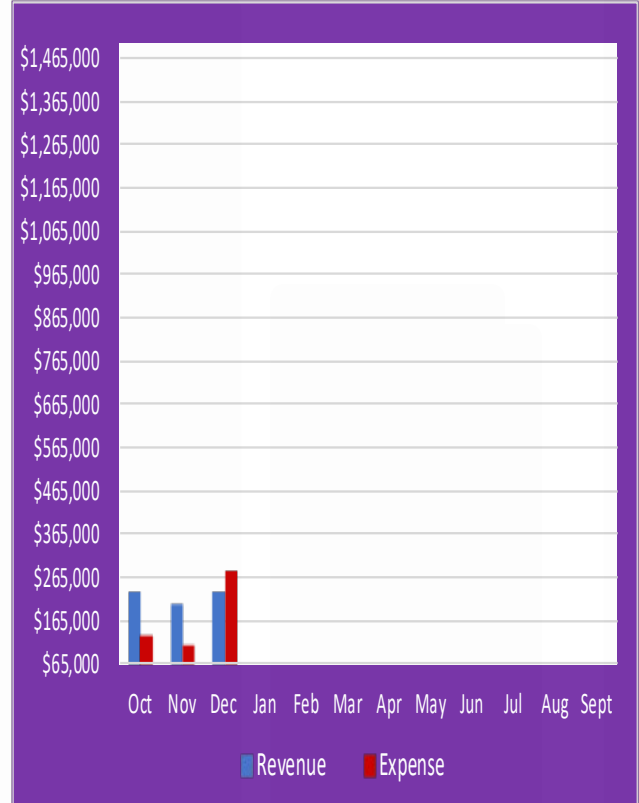
As of December 31, 2019



OVERALL FUND PERFORMANCE

REVENUES VS EXPENSES

<u>Month</u>	FY2020 <u>Revenue</u>	FY2020 <u>Expense</u>	Monthly <u>Variance</u>
Oct	\$ 227,085	\$ 128,658	\$ 98,427
Nov	198,030	109,017	\$ 89,013
Dec	226,226	274,798	\$ (48,572)
Jan			\$ -
Feb			\$ -
Mar			\$ -
Apr			\$ -
May			\$ -
Jun			\$ -
Jul			\$ -
Aug			\$ -
Sept			\$ -
Total	\$ 651,341	\$ 512,473	\$ 138,868



Positive

The revenue is in line with projections. The expenses were budgeted to be higher than revenue, using available fund balance on capitla projects.



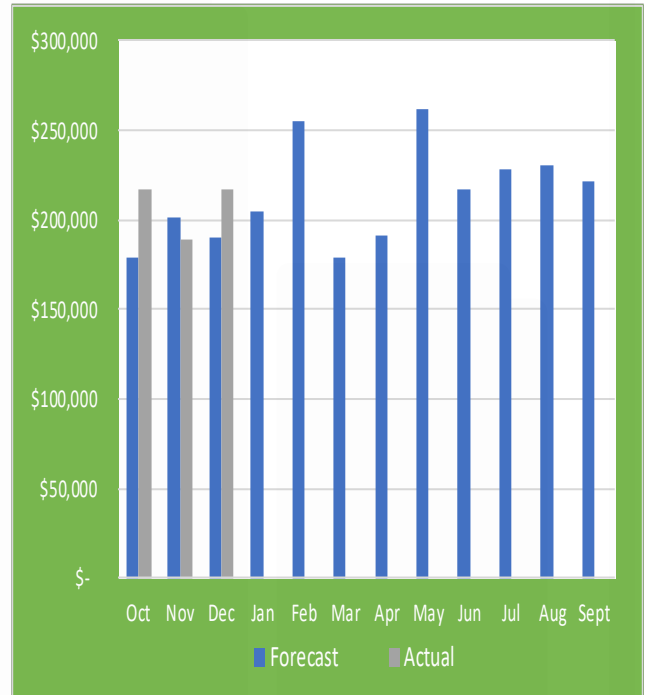
02/21/2020
Summary of Sales Tax Revenue
 As of December 31, 2019



REVENUE ANALYSIS

SALES TAX REVENUE

<u>Month</u>	FY2020 <u>Forecast</u>	FY2020 <u>Actual</u>	Monthly <u>Variance</u>
Oct	\$ 178,902	\$ 217,223	\$ 38,321
Nov	201,052	189,029	\$ (12,023)
Dec	190,167	217,161	\$ 26,994
Jan	204,421		
Feb	255,525		
Mar	178,867		
Apr	191,645		
May	262,161		
Jun	217,197		
Jul	228,184		
Aug	229,973		
Sept	221,906		
Total	\$ 2,560,000	\$ 623,413	\$ 53,292
Forecast YTD	\$ 570,121		
Actual to Forecast	\$ 53,292	9.3%	



Positive

Sales Tax revenue is 75% of total revenue (excluding loan proceeds). The amount in Oct. and Nov. are estimated due to the timing of receiving the payments. The State Comptroller has a two month lag between month earned and month distributed. The Actual to forecast year to date is a positive 9%. This budget was conservative due to the volatility of this revenue source.



Expenditures Budget to Actual Comparison

As of December 31, 2019



OPERATING EXPENDITURES COMPARISON

<u>Category</u>	<u>FY2020 Forecast</u>	<u>FY2020 Actual</u>	<u>Monthly Variance</u>
Personnel	\$ 115,882	\$ 84,567	\$ 31,315
Supplies & Material	9,265	1,268	\$ 7,997
Maintenance & Repairs	6,670	1,077	\$ 5,593
Occupancy	13,500	12,474	\$ 1,026
Contractual Service	94,973	48,602	\$ 46,371
Marketing/Advertising	242,653	212,745	\$ 29,908
Contingency	-	-	\$ -
Debt Service	-	-	\$ -
Total	\$ 482,943	\$ 360,733	\$ 122,210
Forecast to Actual %	25.31%		

Positive

The forecast to actual comparison is a positive 25% year-to-date.



Expenditures Budget to Actual Comparison As of December 31, 2019



CAPITAL OUTLAY PROJECTS

<u>Project</u>	<u>FY2020 Budget</u>	<u>FY2020 Actual</u>	<u>Budget Balance</u>
Trail System Downtown Loop (only engineering and permitting expenses so far)	\$ 140,000	\$ 18,000	\$ 122,000
Bus. Ind. Park-Tech/MLK Infra (only engineering expenses so far)	1,132,000	2,520	\$ 1,129,480
921 Main St. Project Engineering & Constr	1,420,000	133,739	\$ 1,286,261
Total	\$ 2,692,000	\$ 154,259	\$ 2,537,741

These projects are funded by various funds including 2013 Bond funds, operating funds and 2018 Bond funds. The 921 Main St. Project was funded through a loan.



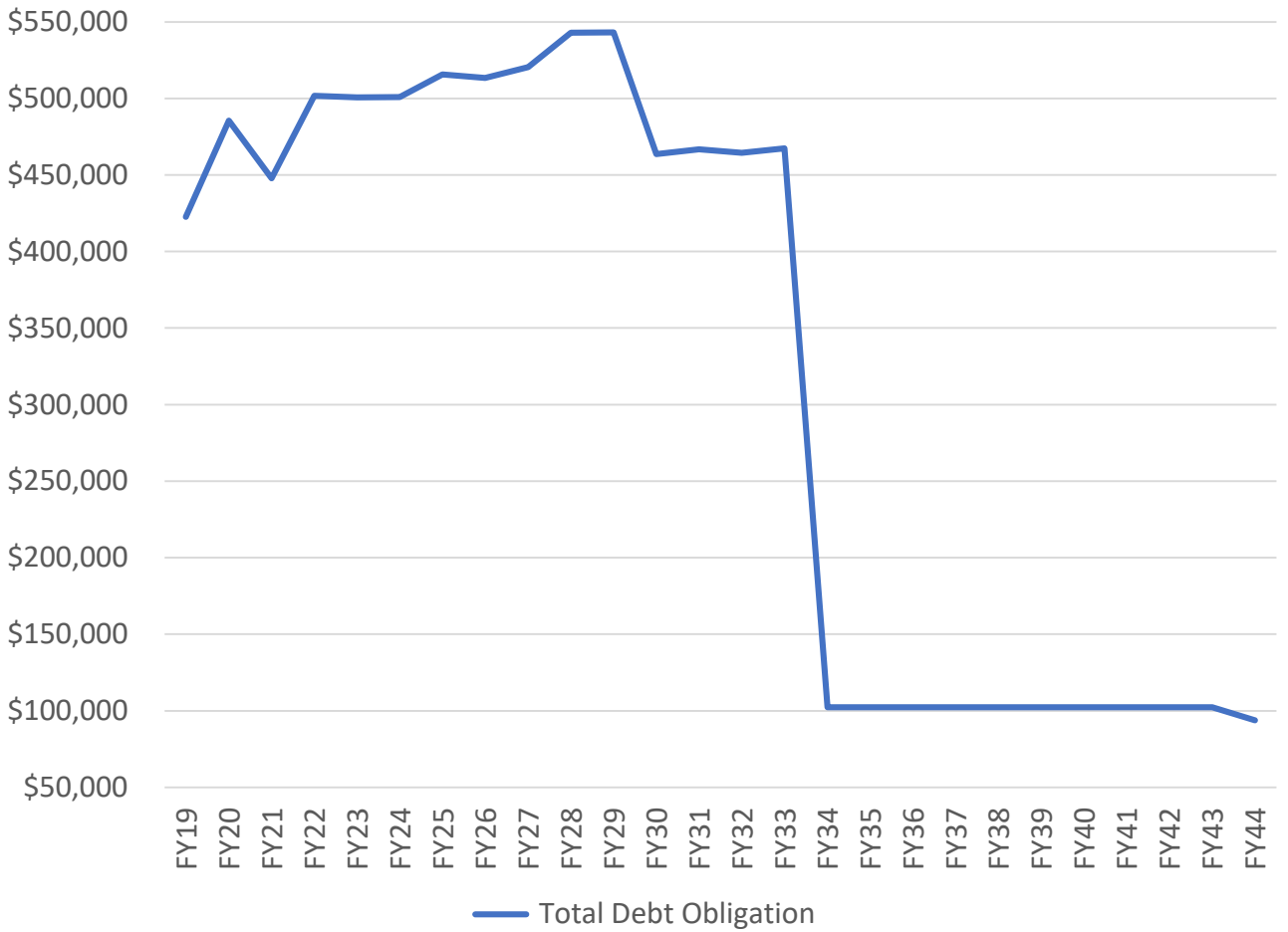


BASTROP ECONOMIC DEVELOPMENT CORPORATION FUND FY 2019-2020 BUDGET

Working Capital 9-30-2019	\$	5,109,097
 FY 2019-2020		
Budgeted		
Revenues	\$	<u>4,213,800</u>
Total FY 2018 Resources	\$	9,322,897
 Budgeted Expenditures:		
Operating Expenses	\$	(2,066,446)
Capital Expenses	\$	(2,692,000)
Debt Service	\$	<u>(485,453)</u>
	\$	(5,243,899)
 Projected Working Capital Balance 09-30-2020	 \$	 4,078,998
 Reserve 25% of Operating Expense	 \$	 516,612



Total Debt Obligation



BEDC Financial Statements attached

CITY OF BASTROP
FINANCIAL STATEMENT
AS OF: DECEMBER 31ST, 2019

601-BASTROP E.D.C. FUND

REVENUES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>TAXES & PENALTIES</u>						
00-00-4005 SALES TAX	581,904.57	2,560,000.00	217,161.27	623,412.94	1,936,587.06	24.35
TOTAL TAXES & PENALTIES	581,904.57	2,560,000.00	217,161.27	623,412.94	1,936,587.06	24.35
<u>CHARGES FOR SERVICES</u>						
00-00-4047 LEASE AGREEMENT	3,450.00	13,800.00	1,150.00	3,450.00	10,350.00	25.00
TOTAL CHARGES FOR SERVICES	3,450.00	13,800.00	1,150.00	3,450.00	10,350.00	25.00
<u>OTHER REVENUE</u>						
<u>INTEREST INCOME</u>						
00-00-4400 INTEREST INCOME	32,115.12	80,000.00	7,914.53	24,478.32	55,521.68	30.60
00-00-4401 INTEREST RECEIVED ON NOTES	72.58	0.00	0.00	0.00	0.00	0.00
TOTAL INTEREST INCOME	32,187.70	80,000.00	7,914.53	24,478.32	55,521.68	30.60
<u>MISCELLANEOUS</u>						
00-00-4524 RENTAL INCOME	0.00	40,000.00	0.00	0.00	40,000.00	0.00
TOTAL MISCELLANEOUS	0.00	40,000.00	0.00	0.00	40,000.00	0.00
<u>TRANSFERS-IN</u>						
<u>OTHER SOURCES</u>						
00-00-4805 GAIN/LOSS ON SALE OF FIXED AS	0.00	100,000.00	0.00	0.00	100,000.00	0.00
00-00-4810 BOND PROCEEDS	0.00	1,420,000.00	0.00	0.00	1,420,000.00	0.00
TOTAL OTHER SOURCES	0.00	1,520,000.00	0.00	0.00	1,520,000.00	0.00
** TOTAL REVENUE **	617,542.27	4,213,800.00	226,225.80	651,341.26	3,562,458.74	15.46

CITY OF BASTROP
FINANCIAL STATEMENT
AS OF: DECEMBER 31ST, 2019

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
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DUE TO/FROM
=====

00-NON-PROGRAM
=====

BEDC ADMINISTRATION
=====

00-NON-PROGRAM
=====

PERSONNEL COSTS

70-00-5101 BEDC OPERATIONAL SALARIES	64,481.17	373,625.00	23,603.46	64,219.14	309,405.86	17.19
70-00-5116 LONGEVITY	579.00	705.00	0.00	20.25	684.75	2.87
70-00-5150 SOCIAL SECURITY	4,819.88	28,669.00	2,637.45	4,720.26	23,948.74	16.46
70-00-5151 RETIREMENT	7,506.26	42,973.00	2,781.67	7,506.00	35,467.00	17.47
70-00-5155 GROUP INSURANCE	8,144.80	43,479.00	1,962.15	7,976.41	35,502.59	18.35
70-00-5156 WORKER'S COMPENSATION	<u>93.54</u>	<u>701.00</u>	<u>0.00</u>	<u>125.00</u>	<u>576.00</u>	<u>17.83</u>
TOTAL PERSONNEL COSTS	85,624.65	490,152.00	30,984.73	84,567.06	405,584.94	17.25

SUPPLIES & MATERIALS

70-00-5201 OPERATIONAL SUPPLIES (OFFIC	811.56	7,000.00	1,115.55	1,250.60	5,749.40	17.87
70-00-5203 POSTAGE	6.52	360.00	0.00	0.00	360.00	0.00
70-00-5206 OFFICE EQUIPMENT	<u>6,351.51</u>	<u>15,000.00</u>	<u>17.98</u>	<u>17.98</u>	<u>14,982.02</u>	<u>0.12</u>
TOTAL SUPPLIES & MATERIALS	7,169.59	22,360.00	1,133.53	1,268.58	21,091.42	5.67

MAINTENANCE & REPAIRS

70-00-5301 MAINT OF EQUIPMENT	0.00	1,000.00	0.00	0.00	1,000.00	0.00
70-00-5331 INDUSTRIAL PARK MAINT EXP	2,900.00	20,200.00	0.00	200.00	20,000.00	0.99
70-00-5345 BUILDING REPAIRS & MAINT.	<u>1,075.00</u>	<u>5,000.00</u>	<u>250.00</u>	<u>877.00</u>	<u>4,123.00</u>	<u>17.54</u>
TOTAL MAINTENANCE & REPAIRS	3,975.00	26,200.00	250.00	1,077.00	25,123.00	4.11

OCCUPANCY

70-00-5401 COMMUNICATIONS	1,994.54	9,000.00	1,215.14	1,382.33	7,617.67	15.36
70-00-5402 OFFICE RENTAL	13,200.00	42,000.00	3,500.00	10,500.00	31,500.00	25.00
70-00-5403 UTILITIES	<u>359.61</u>	<u>3,000.00</u>	<u>301.23</u>	<u>592.02</u>	<u>2,407.98</u>	<u>19.73</u>
TOTAL OCCUPANCY	15,554.15	54,000.00	5,016.37	12,474.35	41,525.65	23.10

FINANCIAL STATEMENT

AS OF: DECEMBER 31ST, 2019

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>CONTRACTUAL SERVICES</u>						
70-00-5505 PROFESSIONAL SERVICES	10,438.01	140,000.00	4,288.00	7,637.00	132,363.00	5.46
70-00-5518 AUDIT	0.00	10,000.00	0.00	0.00	10,000.00	0.00
70-00-5525 LEGALS	1,465.00	30,000.00	1,345.08	1,345.08	28,654.92	4.48
70-00-5526 LEGAL PROJECTS	526.50	15,000.00	780.00	780.00	14,220.00	5.20
70-00-5530 ENGINEERING	0.00	15,000.00	700.00	700.00	14,300.00	4.67
70-00-5540 PROPERTY INSURANCE	257.20	4,974.00	0.00	3,940.30	1,033.70	79.22
70-00-5548 RENTAL -921 MAIN ST EXPENSE	0.00	4,576.00	0.00	0.00	4,576.00	0.00
70-00-5561 CONTRACTUAL SERVICES	13,788.05	0.00	0.00	0.00	0.00	0.00
70-00-5574 CITY PROJECTS & PROGRAMS	0.00	49,950.00	0.00	0.00	49,950.00	0.00
70-00-5575 CITY SHARED SERVICES	0.00	7,500.00	0.00	0.00	7,500.00	0.00
70-00-5580 BIP TECHNOLOGY/MLK INFRASTR	43,000.00	103,200.00	8,600.00	17,200.00	86,000.00	16.67
70-00-5596 MAIN STREET PROG SUPPORT	12,500.01	50,000.00	4,166.67	12,500.01	37,499.99	25.00
70-00-5598 CITY ADMINISTRATIVE SUPPORT	<u>4,500.00</u>	<u>18,000.00</u>	<u>1,500.00</u>	<u>4,500.00</u>	<u>13,500.00</u>	<u>25.00</u>
TOTAL CONTRACTUAL SERVICES	86,474.77	448,200.00	21,379.75	48,602.39	399,597.61	10.84
<u>OTHER CHARGES</u>						
70-00-5603 MARKETING TRAVEL	3,765.96	28,000.00	362.42	362.42	27,637.58	1.29
70-00-5604 BUSINESS DEVELOPMENT	574.75	8,000.00	76.49	197.81	7,802.19	2.47
70-00-5605 TRAINING TRAVEL	8,840.89	20,000.00	510.00	2,418.58	17,581.42	12.09
70-00-5606 AUTO ALLOWANCE - STAFF	263.96	7,200.00	461.54	692.31	6,507.69	9.62
70-00-5615 DUES, SUBSCRIPTIONS & PUBLI	3,583.73	24,000.00	980.90	6,081.24	17,918.76	25.34
70-00-5631 BONDS FOR BEDC OFFICERS	966.00	1,000.00	0.00	885.50	114.50	88.55
70-00-5633 LOCAL/MISC ADV & SPONSORSHI	2,313.00	25,000.00	0.00	0.00	25,000.00	0.00
70-00-5634 NATIONAL/REG ADV & MARKETIN	692.02	48,000.00	160.00	7,357.02	40,642.98	15.33
70-00-5636 DIGITAL ADV & MARKETING	0.00	40,000.00	0.00	0.00	40,000.00	0.00
70-00-5637 SPECIAL ADV & MARKETING	0.00	25,000.00	0.00	15,200.00	9,800.00	60.80
70-00-5640 SPL PROJ-REDEVELOPMENT GRAN	0.00	50,000.00	0.00	0.00	50,000.00	0.00
70-00-5641 SPL EDUC & WORKFORCE DEVELO	10,294.85	30,000.00	0.00	10,603.70	19,396.30	35.35
70-00-5642 SPL ENTREPRENEURIAL/SM BUS	0.00	20,000.00	0.00	0.00	20,000.00	0.00
70-00-5643 SPL RETAIL RECRUITING	7,250.00	20,000.00	7,250.00	7,250.00	12,750.00	36.25
70-00-5644 380 AGREEMENT REIMBURSEMENT	89,748.92	385,000.00	101,696.32	101,696.32	283,303.68	26.41
70-00-5645 WATER RIGHTS PROP FUNDING	0.00	60,000.00	60,000.00	60,000.00	0.00	100.00
70-00-5646 LAND/GRANT REBATES	0.00	9,334.00	0.00	0.00	9,334.00	0.00
70-00-5650 SPL PRJT BUS RETEN & EXPAN	0.00	5,000.00	0.00	0.00	5,000.00	0.00
70-00-5689 OPPORTUNITY AUSTIN	0.00	10,000.00	0.00	0.00	10,000.00	0.00
70-00-5690 CASH INCENTIVE	0.00	150,000.00	0.00	0.00	150,000.00	0.00
70-00-5691 CLOSING COSTS	<u>0.00</u>	<u>35,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>35,000.00</u>	<u>0.00</u>
TOTAL OTHER CHARGES	128,294.08	1,000,534.00	171,497.67	212,744.90	787,789.10	21.26

CITY OF BASTROP
FINANCIAL STATEMENT
AS OF: DECEMBER 31ST, 2019

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>CONTINGENCY</u>						
70-00-5900 CONTINGENCY	0.00	25,000.00	0.00	0.00	25,000.00	0.00
TOTAL CONTINGENCY	0.00	25,000.00	0.00	0.00	25,000.00	0.00
<u>CAPITAL OUTLAY</u>						
70-00-6713 TRAIL SYS FROM ESKEW TO HWY	805.00	140,000.00	7,500.00	18,000.00	122,000.00	12.86
70-00-6714 921 MAINSTREET PROJECT	0.00	1,420,000.00	37,035.52	133,738.52	1,286,261.48	9.42
70-00-6715 BIP TECHNOLOGY/MLK INFRASTR	1,486.25	1,132,000.00	0.00	0.00	1,132,000.00	0.00
70-00-6716 AGNES/HOME DEPOT INFRASTRU	713.05	0.00	0.00	0.00	0.00	0.00
TOTAL CAPITAL OUTLAY	1,578.20	2,692,000.00	44,535.52	151,738.52	2,540,261.48	5.64
<u>DEBT SERVICE</u>						
70-00-7133 C OF O SERIES 2013 PRINCIPL	0.00	79,000.00	0.00	0.00	79,000.00	0.00
70-00-7134 C OF O SERIES 2013 INTEREST	0.00	91,429.00	0.00	0.00	91,429.00	0.00
70-00-7137 C OF O SERIES 2010 PRINCIPA	0.00	49,968.00	0.00	0.00	49,968.00	0.00
70-00-7138 C OF O SERIES 2010 INTEREST	0.00	6,152.00	0.00	0.00	6,152.00	0.00
70-00-7156 GO REFUNDING 2017-INT	0.00	20,000.00	0.00	0.00	20,000.00	0.00
70-00-7603 BOND 2006 - PRINC	0.00	55,000.00	0.00	0.00	55,000.00	0.00
70-00-7604 BOND 2006 - INT	0.00	3,080.00	0.00	0.00	3,080.00	0.00
70-00-7605 BOND PRINCIPAL 2018	0.00	70,000.00	0.00	0.00	70,000.00	0.00
70-00-7606 BOND INTEREST 2018	0.00	40,341.00	0.00	0.00	40,341.00	0.00
70-00-7608 ROSCOE LOAN 2019 - INTEREST	0.00	70,482.60	0.00	0.00	70,482.60	0.00
TOTAL DEBT SERVICE	0.00	485,452.60	0.00	0.00	485,452.60	0.00
TOTAL 00-NON-PROGRAM	328,670.44	5,243,898.60	274,797.57	512,472.80	4,731,425.80	9.77
ADMINISTRATION =====						
<u>CAPITAL OUTLAY</u>						
<u>DEBT SERVICE</u>						
TOTAL BEDC ADMINISTRATION	328,670.44	5,243,898.60	274,797.57	512,472.80	4,731,425.80	9.77
*** TOTAL EXPENSES ***	328,670.44	5,243,898.60	274,797.57	512,472.80	4,731,425.80	9.77

*** END OF REPORT ***

AS OF: DECEMBER 31ST, 2019

601-BASTROP E.D.C. FUND

ACCOUNT# TITLE

ASSETS
=====

00-00-1010	BEDC OPERATING ACCT	123,383.79
00-00-1012	TEXAS CLASS	2,068,489.31
00-00-1100	TEXPOOL	2,680,605.66
00-00-1135	DREYFUS MM ACCT	3,399.44
00-00-1141	CERTIFICATE OF DEPOSIT FN	553,000.00
00-00-1224	ACCT RECEIVABLE-SALES TAX	404,246.12
00-00-1227	ACCOUNTS RECEIVABLE-OTHER	8,333.32
00-00-1420	EQUIPMENT	8,300.77
00-00-1460	FIXED ASSETS - BUILDING	845,593.73
00-00-1470	FIXED ASSETS - LAND	525,748.31
00-00-1480	FIXED ASSETS - INFRASTRUC	0.18
00-00-1490	CONST IN PROGRESS-INFRAST	2,012,118.74
00-00-1499	ACCUMULATED DEPRECIATION(348,389.28)
00-00-1570	DEFERRED OUTFLOW-CITY OPE	1,702.00
00-00-1575	DEFERRED OUTFLOWS-PENSION	20,827.00
00-00-1576	DEFERRED OUTFLOWS-ACTUARI	4,839.00
00-00-1578	DEFERRED OUTFLOWS-ASSUMPT	1,268.00
00-00-1579	DEFERRED OUTFLOW-TMRS OPE	679.00
00-00-1587	PREPAID EXPENSES	<u>15,793.78</u>

8,929,938.87

TOTAL ASSETS

8,929,938.87
=====

AS OF: DECEMBER 31ST, 2019

601-BASTROP E.D.C. FUND

ACCOUNT# TITLE

LIABILITIES & FUND BALANCE

=====

00-00-2000	ACCOUNTS PAYABLE	33,212.39
00-00-2039	RETAINAGE PAYABLES	28,357.30
00-00-2080	NOTES PAYABLE-CITY-WTR PR	240,000.00
00-00-2101	BONDS PAYABLE CURRENT POR	313,968.00
00-00-2103	TAX/REV BOND SERIES 2018	1,120,000.00
00-00-2125	ACCRUED INTEREST PAYABLE	24,886.16
00-00-2127	ACCRUED EXPENSES-TMRS OPE	48,976.41
00-00-2235	UNEARNED REVENUE-TOWER	10,350.00
00-00-2346	DUE TO CLEARING FUND	103,945.69
00-00-2356	DUE TO OTHER GOVERNMENTS	2,871,450.44
00-00-2370	DEFERRED INFLOW-CITY OPEB	1,926.00
00-00-2376	DEFERRED INFLOW-ACTUARIAL	14,877.00
00-00-2405	ENCUMBRANCE ACCOUNT (1,788,803.34)	
00-00-2406	RESERVE FOR ENCUMBRANCE	1,788,803.34
00-00-2407	PRIOR YR ENCUMBRANCE ACCT	10,839.78
00-00-2408	PR YR RESERV FOR ENCUMBR(10,839.78)
00-00-2850	NET PENSION LIABLITY	84,229.00
00-00-2870	COMPENSATED ABSENCES PAYA	<u>12,027.20</u>

4,908,205.59

TOTAL LIABILITIES

4,908,205.59

SURPLUS (DEFICIT) 138,868.46

00-00-3000	NET ASSETS	3,093,708.91
00-00-3119	DESIGNATED OPERATING	150,000.00
00-00-3400	CONTRIBUTED CAPITAL	521,695.50
00-00-3506	RESTRICTED-ELLIOTT PARTN(0.01)
00-00-3507	RESTRICTED - AEI TECHNOLO	9,333.00
00-00-3510	RESTRICTED-RESERVE 2018 B	<u>108,127.42</u>

TOTAL EQUITY

4,021,733.28

TOTAL LIABILITIES & FUND EQUITY

8,929,938.87

=====

Bastrop Economic Development Corporation

Financial Summary For Period Ending January 2020



Summary of Revenues and Expenditures

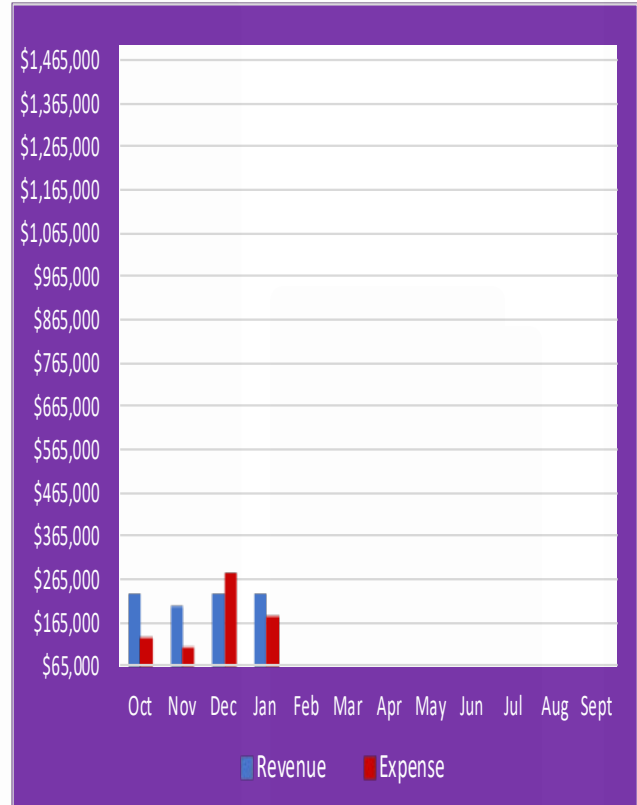
As of January 31, 2020



OVERALL FUND PERFORMANCE

REVENUES VS EXPENSES

<u>Month</u>	FY2020 <u>Revenue</u>	FY2020 <u>Expense</u>	Monthly <u>Variance</u>
Oct	\$ 227,085	\$ 128,658	\$ 98,427
Nov	198,030	109,017	\$ 89,013
Dec	226,226	274,798	\$ (48,572)
Jan	226,086	175,434	\$ 50,652
Feb			\$ -
Mar			\$ -
Apr			\$ -
May			\$ -
Jun			\$ -
Jul			\$ -
Aug			\$ -
Sept			\$ -
Total	\$ 877,427	\$ 687,907	\$ 189,520



Positive

The revenue is in line with projections. The expenses were budgeted to be higher than revenue, using available fund balance on capital projects. These project funds are still yet to be expensed.



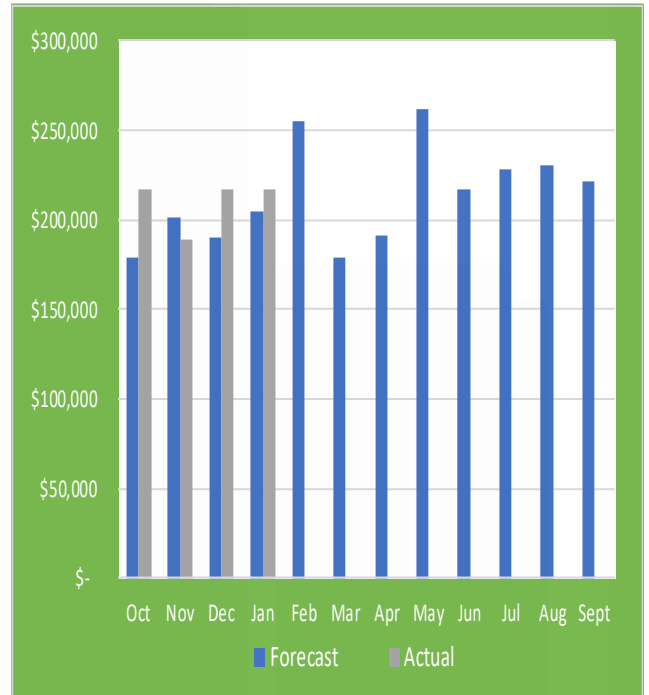
02/21/2020
Summary of Sales Tax Revenue
 As of January 31, 2020



REVENUE ANALYSIS

SALES TAX REVENUE

<u>Month</u>	<u>FY2020 Forecast</u>	<u>FY2020 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 178,902	\$ 217,223	\$ 38,321
Nov	201,052	189,029	\$ (12,023)
Dec	190,167	217,161	\$ 26,994
Jan	204,421	217,121	\$ 12,700
Feb	255,525		
Mar	178,867		
Apr	191,645		
May	262,161		
Jun	217,197		
Jul	228,184		
Aug	229,973		
Sept	221,906		
Total	\$ 2,560,000	\$ 840,534	\$ 65,992
Forecast YTD	\$ 774,542		
Actual to Forecast	\$ 65,992	8.5%	



Positive

Sales tax revenue is 75% of total revenue (excluding loan proceeds). The amount in Oct. and Nov. are estimated due to the timing of receiving the payments. The State Comptroller has a two month lag between month earned and month distributed. The actual to forecast year-to-date is a positive 8.5%. This budget was conservative due to the volatility of this revenue source.



Expenditures Budget to Actual Comparison

As of January 31, 2020



OPERATING EXPENDITURES COMPARISON

<u>Category</u>	<u>FY2020 Forecast</u>	<u>FY2020 Actual</u>	<u>Monthly Variance</u>
Personnel	\$ 154,391	\$ 132,776	\$ 21,615
Supplies & Material	10,720	1,570	\$ 9,150
Maintenance & Repairs	8,840	1,527	\$ 7,313
Occupancy	18,000	16,954	\$ 1,046
Contractual Service	126,856	85,758	\$ 41,098
Marketing/Advertising	265,103	231,812	\$ 33,291
Contingency	-	-	\$ -
Debt Service	-	-	\$ -
Total	\$ 583,910	\$ 470,397	\$ 113,513
Forecast to Actual %	19.44%		

Positive

The forecast to actual comparison is a positive 19% year-to-date.



Expenditures Budget to Actual Comparison

As of January 31, 2020



CAPITAL OUTLAY PROJECTS

<u>Project</u>	<u>FY2020 Budget</u>	<u>FY2020 Actual</u>	<u>Budget Balance</u>
Trail System Downtown loop (only engineering and permitting expenses so far)	\$ 140,000	\$ 18,000	\$ 122,000
Bus. Ind. Park-Tech/MLK Infra (only engineering expenses so far)	1,132,000	5,800	\$ 1,126,200
921 Main St. Project Engineering & Construction	1,420,000	140,719	\$ 1,279,281
Total	\$ 2,692,000	\$ 164,519	\$ 2,527,481

These projects are funded by various funds including 2013 Bond funds, operating funds and 2018 Bond funds. The 921 Main St. Project was funded through a loan.



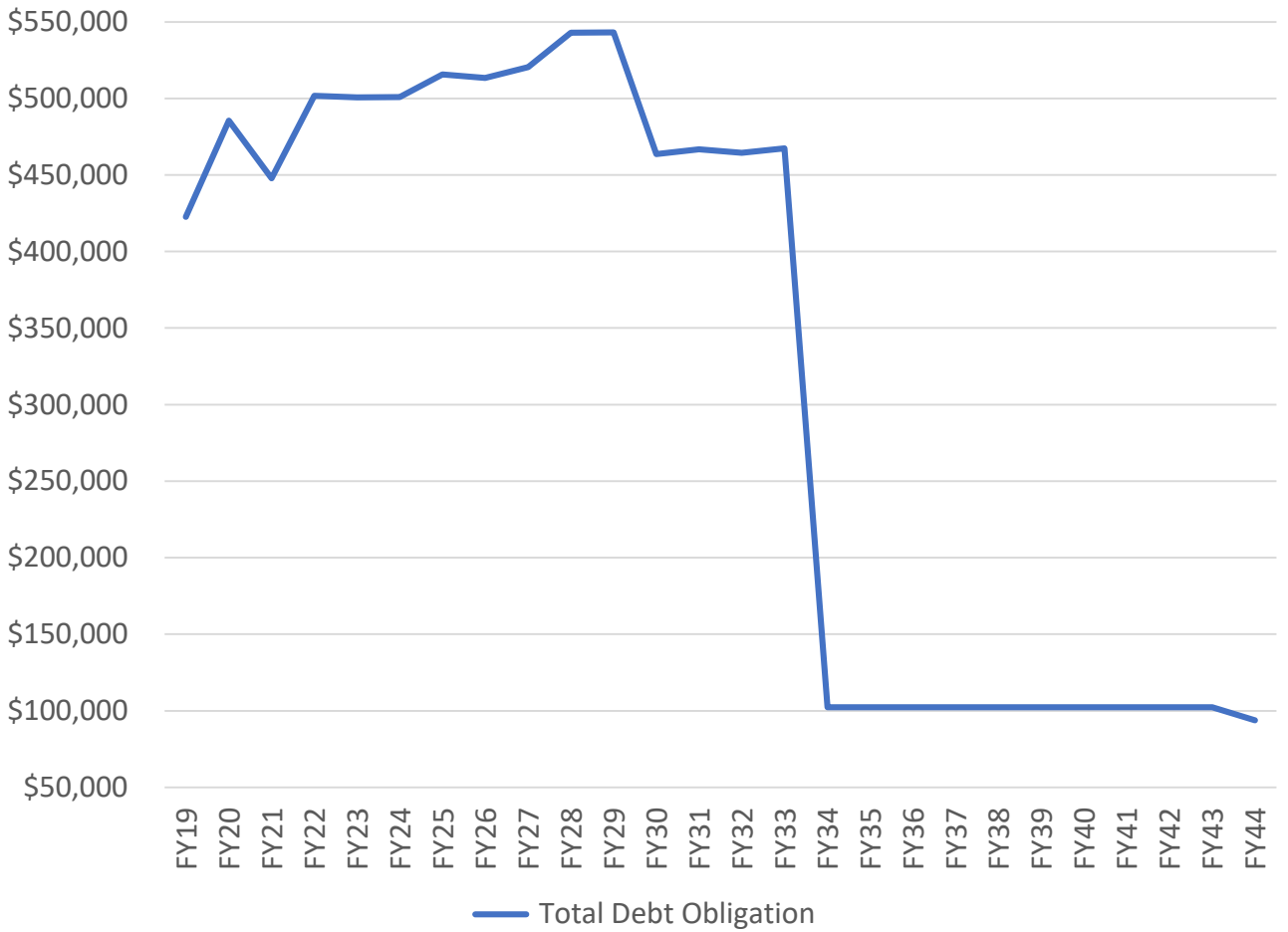


BASTROP ECONOMIC DEVELOPMENT CORPORATION FUND FY 2019-2020 BUDGET

Working Capital 9-30-2019	\$	5,109,097
 FY 2019-2020		
Budgeted		
Revenues	\$	<u>4,213,800</u>
Total FY 2018 Resources	\$	9,322,897
 Budgeted Expenditures:		
Operating Expenses	\$	(2,066,446)
Capital Expenses	\$	(2,692,000)
Debt Service	\$	<u>(485,453)</u>
	\$	(5,243,899)
 Projected Working Capital Balance 09-30-2020	 \$	 4,078,998
 Reserve 25% of Operating Expense	 \$	 516,612



Total Debt Obligation



BEDC Financial Statements attached

CITY OF BASTROP
FINANCIAL STATEMENT
AS OF: JANUARY 31ST, 2020

601-BASTROP E.D.C. FUND

REVENUES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>TAXES & PENALTIES</u>						
00-00-4005 SALES TAX	<u>764,103.21</u>	<u>2,560,000.00</u>	<u>217,121.06</u>	<u>840,534.00</u>	<u>1,719,466.00</u>	<u>32.83</u>
TOTAL TAXES & PENALTIES	764,103.21	2,560,000.00	217,121.06	840,534.00	1,719,466.00	32.83
<u>CHARGES FOR SERVICES</u>						
00-00-4047 LEASE AGREEMENT	<u>4,600.00</u>	<u>13,800.00</u>	<u>1,150.00</u>	<u>4,600.00</u>	<u>9,200.00</u>	<u>33.33</u>
TOTAL CHARGES FOR SERVICES	4,600.00	13,800.00	1,150.00	4,600.00	9,200.00	33.33
<u>OTHER REVENUE</u>						
<u>INTEREST INCOME</u>						
00-00-4400 INTEREST INCOME	43,975.43	80,000.00	7,814.59	32,292.91	47,707.09	40.37
00-00-4401 INTEREST RECEIVED ON NOTES	<u>89.95</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL INTEREST INCOME	44,065.38	80,000.00	7,814.59	32,292.91	47,707.09	40.37
<u>MISCELLANEOUS</u>						
00-00-4524 RENTAL INCOME	<u>0.00</u>	<u>40,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>40,000.00</u>	<u>0.00</u>
TOTAL MISCELLANEOUS	0.00	40,000.00	0.00	0.00	40,000.00	0.00
<u>TRANSFERS-IN</u>						
<u>OTHER SOURCES</u>						
00-00-4805 GAIN/LOSS ON SALE OF FIXED AS	0.00	100,000.00	0.00	0.00	100,000.00	0.00
00-00-4810 BOND PROCEEDS	<u>0.00</u>	<u>1,420,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,420,000.00</u>	<u>0.00</u>
TOTAL OTHER SOURCES	<u>0.00</u>	<u>1,520,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1,520,000.00</u>	<u>0.00</u>
** TOTAL REVENUE **	812,768.59	4,213,800.00	226,085.65	877,426.91	3,336,373.09	20.82

CITY OF BASTROP
FINANCIAL STATEMENT
AS OF: JANUARY 31ST, 2020

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
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DUE TO/FROM
=====

00-NON-PROGRAM
=====

BEDC ADMINISTRATION
=====

00-NON-PROGRAM
=====

PERSONNEL COSTS

70-00-5101 BEDC OPERATIONAL SALARIES	92,321.69	373,625.00	36,231.90	100,451.04	273,173.96	26.89
70-00-5116 LONGEVITY	579.00	705.00	687.00	707.25	(2.25)	100.32
70-00-5150 SOCIAL SECURITY	6,867.60	28,669.00	2,798.71	7,518.97	21,150.03	26.23
70-00-5151 RETIREMENT	10,723.58	42,973.00	4,321.72	11,827.72	31,145.28	27.52
70-00-5155 GROUP INSURANCE	12,010.97	43,479.00	4,044.82	12,021.23	31,457.77	27.65
70-00-5156 WORKER'S COMPENSATION	<u>181.44</u>	<u>701.00</u>	<u>125.00</u>	<u>250.00</u>	<u>451.00</u>	<u>35.66</u>
TOTAL PERSONNEL COSTS	122,684.28	490,152.00	48,209.15	132,776.21	357,375.79	27.09

SUPPLIES & MATERIALS

70-00-5201 OPERATIONAL SUPPLIES (OFFIC	1,558.16	7,000.00	176.75	1,427.35	5,572.65	20.39
70-00-5203 POSTAGE	6.52	360.00	0.00	0.00	360.00	0.00
70-00-5206 OFFICE EQUIPMENT	<u>8,026.86</u>	<u>15,000.00</u>	<u>124.98</u>	<u>142.96</u>	<u>14,857.04</u>	<u>0.95</u>
TOTAL SUPPLIES & MATERIALS	9,591.54	22,360.00	301.73	1,570.31	20,789.69	7.02

MAINTENANCE & REPAIRS

70-00-5301 MAINT OF EQUIPMENT	225.00	1,000.00	0.00	0.00	1,000.00	0.00
70-00-5331 INDUSTRIAL PARK MAINT EXP	2,900.00	20,200.00	200.00	400.00	19,800.00	1.98
70-00-5345 BUILDING REPAIRS & MAINT.	<u>1,075.00</u>	<u>5,000.00</u>	<u>250.00</u>	<u>1,127.00</u>	<u>3,873.00</u>	<u>22.54</u>
TOTAL MAINTENANCE & REPAIRS	4,200.00	26,200.00	450.00	1,527.00	24,673.00	5.83

OCCUPANCY

70-00-5401 COMMUNICATIONS	2,728.77	9,000.00	775.33	2,157.66	6,842.34	23.97
70-00-5402 OFFICE RENTAL	16,500.00	42,000.00	3,500.00	14,000.00	28,000.00	33.33
70-00-5403 UTILITIES	<u>731.98</u>	<u>3,000.00</u>	<u>204.57</u>	<u>796.59</u>	<u>2,203.41</u>	<u>26.55</u>
TOTAL OCCUPANCY	19,960.75	54,000.00	4,479.90	16,954.25	37,045.75	31.40

CITY OF BASTROP
FINANCIAL STATEMENT
AS OF: JANUARY 31ST, 2020

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>CONTRACTUAL SERVICES</u>						
70-00-5505 PROFESSIONAL SERVICES	10,438.01	140,000.00	21,019.68	28,656.68	111,343.32	20.47
70-00-5518 AUDIT	0.00	10,000.00	0.00	0.00	10,000.00	0.00
70-00-5525 LEGALS	1,854.84	30,000.00	844.00	2,189.08	27,810.92	7.30
70-00-5526 LEGAL PROJECTS	526.50	15,000.00	459.00	1,239.00	13,761.00	8.26
70-00-5530 ENGINEERING	0.00	15,000.00	350.00	1,050.00	13,950.00	7.00
70-00-5540 PROPERTY INSURANCE	514.38	4,974.00	216.30	4,156.60	817.40	83.57
70-00-5548 RENTAL -921 MAIN ST EXPENSE	0.00	4,576.00	0.00	0.00	4,576.00	0.00
70-00-5561 CONTRACTUAL SERVICES	13,788.05	0.00	0.00	0.00	0.00	0.00
70-00-5574 CITY PROJECTS & PROGRAMS	0.00	49,950.00	0.00	0.00	49,950.00	0.00
70-00-5575 CITY SHARED SERVICES	0.00	7,500.00	0.00	0.00	7,500.00	0.00
70-00-5580 BIP TECHNOLOGY/MLK INFRASTR	43,000.00	103,200.00	8,600.00	25,800.00	77,400.00	25.00
70-00-5596 MAIN STREET PROG SUPPORT	16,666.68	50,000.00	4,166.67	16,666.68	33,333.32	33.33
70-00-5598 CITY ADMINISTRATIVE SUPPORT	<u>6,000.00</u>	<u>18,000.00</u>	<u>1,500.00</u>	<u>6,000.00</u>	<u>12,000.00</u>	<u>33.33</u>
TOTAL CONTRACTUAL SERVICES	92,788.46	448,200.00	37,155.65	85,758.04	362,441.96	19.13
<u>OTHER CHARGES</u>						
70-00-5603 MARKETING TRAVEL	7,201.81	28,000.00	4,136.74	4,499.16	23,500.84	16.07
70-00-5604 BUSINESS DEVELOPMENT	791.08	8,000.00	435.48	633.29	7,366.71	7.92
70-00-5605 TRAINING TRAVEL	9,673.12	20,000.00	0.00	2,418.58	17,581.42	12.09
70-00-5606 AUTO ALLOWANCE - STAFF	263.96	7,200.00	692.31	1,384.62	5,815.38	19.23
70-00-5615 DUES, SUBSCRIPTIONS & PUBLI	8,059.97	24,000.00	4,950.23	11,031.47	12,968.53	45.96
70-00-5631 BONDS FOR BEDC OFFICERS	1,000.00	1,000.00	0.00	885.50	114.50	88.55
70-00-5633 LOCAL/MISC ADV & SPONSORSHI	4,878.00	25,000.00	1,200.00	1,200.00	23,800.00	4.80
70-00-5634 NATIONAL/REG ADV & MARKETIN	727.02	48,000.00	7,452.50	14,809.52	33,190.48	30.85
70-00-5636 DIGITAL ADV & MARKETING	1,087.50	40,000.00	0.00	0.00	40,000.00	0.00
70-00-5637 SPECIAL ADV & MARKETING	0.00	25,000.00	0.00	15,200.00	9,800.00	60.80
70-00-5640 SPL PROJ-REDEVELOPMENT GRAN	0.00	50,000.00	0.00	0.00	50,000.00	0.00
70-00-5641 SPL EDUC & WORKFORCE DEVELO	11,244.85	30,000.00	200.00	10,803.70	19,196.30	36.01
70-00-5642 SPL ENTREPRENEURIAL/SM BUS	0.00	20,000.00	0.00	0.00	20,000.00	0.00
70-00-5643 SPL RETAIL RECRUITING	7,250.00	20,000.00	0.00	7,250.00	12,750.00	36.25
70-00-5644 380 AGREEMENT REIMBURSEMENT	89,748.92	385,000.00	0.00	101,696.32	283,303.68	26.41
70-00-5645 WATER RIGHTS PROP FUNDING	0.00	60,000.00	0.00	60,000.00	0.00	100.00
70-00-5646 LAND/GRANT REBATES	9,333.00	9,334.00	0.00	0.00	9,334.00	0.00
70-00-5650 SPL PRJT BUS RETEN & EXPAN	0.00	5,000.00	0.00	0.00	5,000.00	0.00
70-00-5689 OPPORTUNITY AUSTIN	0.00	10,000.00	0.00	0.00	10,000.00	0.00
70-00-5690 CASH INCENTIVE	0.00	150,000.00	0.00	0.00	150,000.00	0.00
70-00-5691 CLOSING COSTS	<u>0.00</u>	<u>35,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>35,000.00</u>	<u>0.00</u>
TOTAL OTHER CHARGES	151,259.23	1,000,534.00	19,067.26	231,812.16	768,721.84	23.17

CITY OF BASTROP
FINANCIAL STATEMENT
AS OF: JANUARY 31ST, 2020

601-BASTROP E.D.C. FUND

EXPENDITURES	PRIOR Y-T-D	CURRENT BUDGET	M-T-D ACTUAL	Y-T-D ACTUAL	BUDGET BALANCE	% OF BUDGET
<u>CONTINGENCY</u>						
70-00-5900 CONTINGENCY	0.00	25,000.00	0.00	0.00	25,000.00	0.00
TOTAL CONTINGENCY	0.00	25,000.00	0.00	0.00	25,000.00	0.00
<u>CAPITAL OUTLAY</u>						
70-00-6713 TRAIL SYS FROM ESKEW TO HWY	805.00	140,000.00	0.00	18,000.00	122,000.00	12.86
70-00-6714 921 MAINSTREET PROJECT	0.00	1,420,000.00	6,980.68	140,719.20	1,279,280.80	9.91
70-00-6715 BIP TECHNOLOGY/MLK INFRASTR	1,486.25	1,132,000.00	0.00	0.00	1,132,000.00	0.00
70-00-6716 AGNES/HOME DEPOT INFRASTRUC	400,541.00	0.00	0.00	0.00	0.00	0.00
TOTAL CAPITAL OUTLAY	402,832.25	2,692,000.00	6,980.68	158,719.20	2,533,280.80	5.90
<u>DEBT SERVICE</u>						
70-00-7133 C OF O SERIES 2013 PRINCIPL	0.00	79,000.00	0.00	0.00	79,000.00	0.00
70-00-7134 C OF O SERIES 2013 INTEREST	47,234.37	91,429.00	45,714.38	45,714.38	45,714.62	50.00
70-00-7137 C OF O SERIES 2010 PRINCIPA	0.00	49,968.00	0.00	0.00	49,968.00	0.00
70-00-7138 C OF O SERIES 2010 INTEREST	3,938.02	6,152.00	3,075.72	3,075.72	3,076.28	50.00
70-00-7156 GO REFUNDING 2017-INT	10,000.00	20,000.00	10,000.00	10,000.00	10,000.00	50.00
70-00-7603 BOND 2006 - PRINC	0.00	55,000.00	0.00	0.00	55,000.00	0.00
70-00-7604 BOND 2006 - INT	0.00	3,080.00	0.00	0.00	3,080.00	0.00
70-00-7605 BOND PRINCIPAL 2018	0.00	70,000.00	0.00	0.00	70,000.00	0.00
70-00-7606 BOND INTEREST 2018	0.00	40,341.00	0.00	0.00	40,341.00	0.00
70-00-7608 ROSCOE LOAN 2019 - INTEREST	0.00	70,482.60	0.00	0.00	70,482.60	0.00
TOTAL DEBT SERVICE	61,172.39	485,452.60	58,790.10	58,790.10	426,662.50	12.11
TOTAL 00-NON-PROGRAM	864,488.90	5,243,898.60	175,434.47	687,907.27	4,555,991.33	13.12
ADMINISTRATION =====						
<u>CAPITAL OUTLAY</u>						
<u>DEBT SERVICE</u>						
TOTAL BEDC ADMINISTRATION	864,488.90	5,243,898.60	175,434.47	687,907.27	4,555,991.33	13.12
*** TOTAL EXPENSES ***	864,488.90	5,243,898.60	175,434.47	687,907.27	4,555,991.33	13.12

*** END OF REPORT ***

Agenda Item: 4.3

AGENDA MEMORANDUM

Meeting Date: February 24, 2020

Agenda Item: Update on 921 Main Street Building from Project Manager Jimmy Crouch.

Prepared by: BEDC Staff

Jimmy Crouch, the Project Manager for the 921 Main Street Project, will attend the meeting to give an update to the Board.

Attachment: PowerPoint Presentation about 921 Main Street Project.

Recommendation – No recommendation; item for informational purposes only.



Agenda Item: 4.4

AGENDA MEMORANDUM

Meeting Date: February 24, 2020

Agenda Item: Consideration, discussion and possible action to approve Resolution R-2020-05 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with Austin Chamber Opportunity Austin, an industry partner.

Prepared by: BEDC Staff

Opportunity Austin is a five-year regional economic development initiative aimed at fostering job-creating investment across the Austin region. They work to strengthen our community by supporting strategic initiatives across the region in areas of economy, talent and innovation.

Through Opportunity Austin, the Chamber's economic development staff is able to provide confidential support for projects, including real estate research, and the facilitation of all aspects of the site selection process, to their member organizations.

Attachments:

Draft Resolution

Austin Chamber Investment Annual Notice

Recommendation – Approve the Resolution as presented.

[RECOMMENDED MOTION] – I move to approve Resolution R-2020-05.



A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO ENTER INTO AN INDUSTRY PARTNERSHIP.

WHEREAS, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”); and

WHEREAS, to fulfill its public purpose in attracting qualifying projects under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, the BEDC requires certain professional services, including without limitation, an industry partnership with Regional Economic Development Corporations and related entities.

WHEREAS, after careful evaluation and consideration by the Board, it has determined that these services and this support can be provided most beneficially, efficiently and economically under an industry partnership with Opportunity Austin, in an amount not to exceed \$10,000.00, to be executed by the Chief Executive Officer on behalf of the BEDC.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The Board hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

SECTION 2. The Board hereby finds that the provision of certain professional services is necessary for the BEDC’s proper attraction and advancement of qualifying projects under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, and hereby authorizes the Chief Executive Officer to enter into an industry partnership attached hereto as Exhibit “A”.

SECTION 3. This Resolution is effective upon passage.

PASSED AND APPROVED on the _____ day of _____ 20____, by the Board of Directors of the Bastrop Economic Development Corporation.

[SIGNATURE PAGE FOLLOWS]

BASTROP ECONOMIC
DEVELOPMENT CORPORATION

Kathryn Nash, Board Chair

ATTEST:

Sam Kier, Board Treasurer

APPROVED AS TO FORM:

Denton, Navarro, Rocha, Bernal & Zech, P.C.
Board Counsel

DRAFT

Exhibit "A"

DRAFT



OPPORTUNITY AUSTIN

535 East 5th St
Austin TX 78701
United States

Invoice

Date 12/9/2019
Invoice # 8852
Due Date 1/1/2020

Bill To

Bastrop Economic Development Corporation
301 Highway 71 West
Suite 214
Bastrop TX 78602
United States

Item	Amount
2020 Opportunity Austin 4.0 Investment	\$10,000.00
Total	\$10,000.00

Your investment in Opportunity Austin 4.0 will help strengthen our community by supporting strategic initiatives across the region in the areas of economy, talent and community. By working together and leveraging the resources of job creators and visionary thinkers we can ensure a bright future for every Central Texan.

TERMS AND CONDITIONS

95% of your payment may be tax deductible as a business expense. The remaining 5% is not deductible, as it supports local and state lobbying activities of Opportunity Austin.

Remittance Slip

Customer	Bastrop Economic Development Corporation
Invoice#	8852
Amount Due	\$10,000.00
Amount Paid	<hr/>

Make Checks Payable To
 Opportunity Austin
 535 East 5th St
 Austin TX 78701
 United States

Agenda Item: 4.5

AGENDA MEMORANDUM

Meeting Date: February 24, 2020

Agenda Item: Consideration, discussion and possible action to approve Resolution R-2020-06 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into an amended contract with Place Designers, Inc.

Prepared by: BEDC Staff

The estimated amount has increased since the Board approved the original resolution, Resolution R-2020-01, on January 27, 2020.

Attachments:
Draft Resolution (Amended)
Professional Services Agreement

Recommendation – Approve the Resolution as presented.

[RECOMMENDED MOTION] – I move to approve Resolution R-2020-06.



RESOLUTION NO. R-2020-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION APPROVING THE AMENDED TERMS OF A COMMERCIAL DESIGN CONTRACT WITH PLACE DESIGNERS INC.; AUTHORIZING ALL NECESSARY ACTIONS, INCLUDING EXECUTION OF NECESSARY DOCUMENTATION; AND, PROVIDING AN EFFECTIVE DATE AND SAVINGS CLAUSE.

WHEREAS, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Local Government Code, Chapters 501 and 505, et seq., as amended, known as the Development Corporation Act of 1979 (the “Act”), and is acting with the approval of the governing body of the City of Bastrop, Texas (the “City”); and

WHEREAS, after careful evaluation and consideration by the Board, it was determined that a project (“Project”) proposed by Place Designers Inc. (“Company”) will: (i) improve infrastructure upon a dilapidated and previously abandoned City lot; (ii) promote and develop new and expanded business enterprises; (iii) create primary jobs and full-time employees; and, (iv) facilitate the remediation of the property located at 921 Main Street, Bastrop, Texas, and owned by the BEDC; and

WHEREAS, the Board has reviewed the terms and conditions of the new proposed Commercial Design Contract (“Contract”) by and between the BEDC and Place Designers Inc., and determined that it shall replace the original contract that was approved by Resolution No. R-2020-01 on January 27, 2020, and that this new contract under this Resolution fully complies with the statutory requirements that govern the BEDC and is in the best interest of the BEDC to enter such Contract.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The findings set out above are hereby found to be true and correct and are incorporated herein for all purposes.

SECTION 2. The terms and conditions of the Contract attached hereto as Exhibit “A,” are approved and supersede the Contract approved on January 27, 2020, by Resolution No. R-2020-01.

SECTION 3. The Board authorizes BEDC’s Chief Executive Officer to execute a Contract in substantial form with Exhibit “A” and take those actions, including the execution of all other agreements, instruments or documents reasonably necessary to facilitate the purpose of this Resolution.

SECTION 4. This Resolution is effective upon passage.

DULY RESOLVED AND ADOPTED by the Board of Directors of the Bastrop Economic Development Corporation, this ____ day of _____ 2020.

[SIGNATURE PAGE FOLLOWS]

BASTROP ECONOMIC
DEVELOPMENT CORPORATION

Kathryn Nash, Board Chair

ATTEST:

Sam Kier, Board Secretary

APPROVED AS TO FORM:

Denton, Navarro, Rocha, Bernal & Zech, P.C.
Board Counsel

Exhibit "A"

DRAFT

**CITY OF BASTROP ECONOMIC DEVELOPMENT
CORPORATION**

STANDARD PROFESSIONAL SERVICES AGREEMENT

THE STATE OF TEXAS §
 §
BASTROP COUNTY §

This Professional Services Agreement (“Agreement”) is made and entered by and between the City of Bastrop Economic Development Corporation (the “BEDC”), a Texas non-profit industrial development corporation, and Place Designers, Inc., a professional design company in Texas (“Professional”).

Section 1. Duration.

This Agreement shall become effective upon execution by the BEDC and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

Section 2. Scope of Work.

- (A) Professional shall perform the Services as more particularly described in the Scope of Work attached hereto as Exhibit “A”. The work as described in the Scope of Work constitutes the “Project”. Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.
- (B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent Professionals practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional holding the same professional license.
- (C) The Professional shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) The Professional may rely upon the accuracy of reports and surveys provided to it by the BEDC except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

- (A) The Professional shall be paid in the manner set forth in Exhibit “B” and as provided herein.
- (B) *Billing Period:* The Professional may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty

(30) days of the BEDC's receipt of the Professional's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

- (C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be accounted for in Exhibit "B".

Section 4. Changes to the Project Work; Additional Work.

- (A) *Changes to Work:* Professional shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the BEDC finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Professional shall make such revisions if requested and as directed by the BEDC and such services will be considered as additional work and paid for as specified under the following paragraph.
- (B) *Additional Work:* The BEDC retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the BEDC by supplemental agreement before the additional work is undertaken by the Professional. If the Professional is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Professional shall promptly notify the BEDC of that opinion, in writing. If the BEDC agrees that such work does constitute additional work, then the BEDC and the Professional shall execute a supplemental agreement for the additional work and the BEDC shall compensate the Professional for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Professional not previously approved as additional work shall be at risk of the Professional.

Section 5. Time of Completion.

The prompt completion of the services under the Scope of Work is critical to the BEDC. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Professional and termination of this Agreement without any or further liability to the BEDC other than a prorated payment for necessary, timely, and conforming work done by Professional prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Professional shall have completed all tasks and services described in the Scope of Work.

Section 6. Insurance.

Before commencing work under this Agreement, Professional shall obtain and maintain the liability insurance provided for in attached Exhibit "C" throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in Exhibit "C", Professional shall maintain the following limits and types of insurance:

Workers Compensation Insurance: The Professional shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Professional's employees carrying out the work involved in this contract.

General Liability Insurance: The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

Subcontractor: In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

Qualifying Insurance: The insurance required by this Agreement shall be written by a non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "D".

Section 7. Miscellaneous Provisions.

- (A) *Subletting.* The Professional shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the BEDC, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the BEDC in the subletting of any work shall not relieve the Professional of any responsibility for work done by such subcontractor.
- (B) *Ownership of Documents.* Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the BEDC shall be delivered to and become the property of the BEDC. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement, shall be made available, upon request, to the BEDC without restriction or limitation on the further use of such materials; PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE BEDC OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE BEDC'S SOLE RISK AND WITHOUT LIABILITY TO THE PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the BEDC but shall grant to the BEDC a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the BEDC under or pursuant to this Agreement.

- (C) *Professional's Seal.* To the extent that the Professional has a professional seal, it shall be placed on all documents and data furnished by the Professional to the BEDC. All work and services provided under this Agreement will be performed in a good and workmanlike fashion and shall conform to the accepted standards and practices of the Professional's industry. The plans, specifications and data provided by Professional shall be adequate and sufficient to enable those performing the actual work to perform the work as and within the time contemplated by the BEDC and Professional. The BEDC acknowledges that Professional has no control over the methods or means of work nor the costs of labor, materials or equipment. Unless otherwise agreed in writing, any estimates of costs by the Professional are for informational purposes only and are not guarantees.
- (D) *Compliance with Laws.* The Professional shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, workers compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Professional shall furnish the BEDC with satisfactory proof of compliance.
- (E) *Independent Contractor.* Professional acknowledges that Professional is an independent contractor of the BEDC and is not an employee, agent, official or representative of the BEDC. Professional shall not represent, either expressly or through implication, that Professional is an employee, agent, official or representative of the BEDC. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.
- (F) *Non-Collusion.* Professional represents and warrants that Professional has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the BEDC under this Agreement. Professional further agrees that Professional shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the BEDC pursuant to this Agreement) for any of the services performed by Professional under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Professional, Professional shall immediately report that fact to the BEDC and, at the sole option of the BEDC, the BEDC may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Professional under or pursuant to this Agreement.
- (G) *Force Majeure.* If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

- (H) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

Section 8. Termination.

- (A) This Agreement may be terminated:
- (1) By the mutual agreement and consent of both Professional and BEDC;
 - (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
 - (3) By the BEDC, immediately upon notice in writing to the Professional, as consequence of the failure of Professional to perform the services contemplated by this Agreement in a timely or satisfactory manner;
 - (4) By the BEDC, at will and without cause upon not less than thirty (30) days written notice to the Professional.
- (B) If the BEDC terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Professional shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Professional considering the actual costs incurred by the Professional in performing work to date of termination, the value of the work that is nonetheless usable to the BEDC, the cost to the BEDC of employing another Professional to complete the work required and the time required to do so, and other factors that affect the value to the BEDC of the work performed at time of termination. In the event of termination that is not the fault of the Professional, the Professional shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

Section 9. Indemnification. Professional shall indemnify and hold harmless the City of Bastrop, Texas, Economic Development Corporation and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by Professional or Professional's agent, consultant under contract, or another entity over which Professional exercises control (whether active or passive) of Professional or its employees, agents or sub-contractors (collectively referred to as "Professional"), (ii) the failure of Professional to comply with any of the paragraphs herein or the failure of Professional to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Professional expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of Professional, or any of its sub-contractors, as provided above, for which Professional's liability to such employee or former employee would otherwise be limited to payments under State Workers Compensation or similar laws. Nothing herein shall require Professional to indemnify, defend, or

hold harmless any Indemnitee for the Indemnitee's own negligence or willful misconduct. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of Professional in performing Services under this Agreement.

For Professional Liability Claims, Professional shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that Professional or Professional's agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.

Section 10. Notices. Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 11. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 12. Severability. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 13. Waiver. Either BEDC or the Professional shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 14. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Bastrop County, Texas, such that exclusive venue for any action arising out of this Agreement shall be in Bastrop County, Texas.

Section 15. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 16. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 17. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 19. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 20. Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.


Section 21. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 22. Dispute Resolution. The parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than five (5) days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 23. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. Professional represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, Conflicts of Interest Questionnaire and Chapter 2252 of the Texas Government Code, Form 1295 Certificate of Interested Parties online filing with the Texas Ethics Commission.

EXECUTED on this the 4 day of February 2020.

BEDC:

By: 
Name: Cameron Cox
Title: Chief Executive Officer

PROFESSIONAL:

By: _____
Name: _____
Title: _____

ADDRESS FOR NOTICE:

BEDC:

City of Bastrop Economic Development Corporation
Attn: Cameron Cox, Chief Executive Officer
301 Highway 71 West, Suite 214
Bastrop, Texas 78602

PROFESSIONAL:

Name
Address
City, State Zip
[Click here to enter text.](#)

With a copy to:

BEDC Attorney
City of Bastrop Economic Development Corporation
Attn: Robyn Katz
2500 W. William Cannon, Suite 609
Austin, Texas 78745

Exhibit "A"

SCOPE OF WORK

Approach Statement The purpose is to provide professional design services for architectural and building design for a two (2) story infill main street building to be approximately 9,000 s.f. The building will include tenant improvement for the Art Institute. Architect shall coordinate with the engineers. The work will be based on the plans previously provided for Stone Development Group, Inc.

Basic Services

Given the above-stated approach, we will provide the following basic services:

CONSTRUCTION PHASE: After the receipt of bids/proposals, the Consultant shall render the following limited services in connection with the Project for which a construction contract is awarded:

1. The Consultant's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Client of the final Certificate for Payment or sixty (60) days after the date of Substantial Completion of the Work.
2. The Consultant, as a representative of the Client, shall visit the site at intervals appropriate to the stage of the Contractor's operations or as otherwise agreed by the Client and the Consultant in the EXECUTION section, (1) to become generally familiar with and to keep the Client informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Client against defects and deficiencies in the Work and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.
3. The Consultant shall at all times have access to the Work wherever it is in preparation or progress.
4. Communications by and with the Consultant's consultants shall be through the Consultant.
5. **Certificates For Payment:** The Consultant shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Consultant's certification for payment shall constitute a representation to the Client, based on the Consultant's evaluation of the Work as provided in this Section and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion and (4) to specific qualifications expressed by the Consultant. The issuance of a Certificate for Payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Client to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The Consultant shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed

in the Contract Documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Client, Contractor or separate contractors, while allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

6. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Consultant shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Consultant. The Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

7. The Consultant shall prepare Change Orders and Construction Change Directives, with supporting documentation and data, if deemed necessary by the Consultant, for the Client's approval and execution in accordance with the Contract Documents, and may, with the concurrence of the Client, authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. The Consultant shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; shall receive from the Contractor and forward to the Client, for the Client's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. The Consultant shall interpret and decide matters concerning performance of the Client and Contractor under, and requirements of, the Contract Documents on written request of either the Client or Contractor. The Consultant's response to such requests (RFI's – Requests For Information) shall be made in writing within seven (7) days or otherwise with reasonable promptness.

8. Reimbursable Expenses: Six (6) trips to project site in Bastrop, Texas, for Core and Shell; three (3) trips to project site in Bastrop, Texas for Tenant Improvements.

9. EXCLUSIONS TO BASIC SERVICES (SUPPLEMENTAL SERVICES): The following items are specifically excluded from the Scope of Services. Should Consultant be required to provide services in obtaining or coordinating compilation of this information, such services shall be charged as Supplemental Services and listed separately from the Basic Services. Consultant assumes no responsibilities for the accuracy of such information or services provided by others. The Consultant may rely on the accuracy of such information, and shall not be liable for errors or omissions therein. Planning; Subdivision, re-zoning or platting; Provide updated survey information for plat preparation and submittal; Prepare subdivision plat in accordance with current City Codes; Prepare supporting engineering documents as required by current City Codes & Manuals; Prepare Subdivision application and submit to the City; Attend City Board and Council meeting(s) as required/authorized by Client (per diem); TCEQ Stormwater pollution prevention plan application and approval; Flood Study; Detention; Water Quality; Private Fire Protection Systems; Special Use Permits; Future Land Use Plan Amendments; FEMA map revisions; Landscape Compliance Plan; Surveying; Septic (On-site-sewer-facility) Design & Permitting; Any Landscape Architecture; Structural Engineering; Foundation Plan; Mechanical/Electrical/Plumbing Engineering; Environmental and/or archeological studies; Backflow prevention; Off-site Utilities, Improvements or roads; Irrigation Design; Signage Design; Written (Book Format) Specifications; Permit Expediting; Project Phasing; Traffic Impact Analysis; Platting; Environmental and/or archeological studies; Geological assessments;

Geotechnical report; Revisions to Owner provided concepts will be billed on an hourly basis pursuant to a separately written lump sum agreement; Regulatory Agency Fees; Neighborhood Meetings and Public Hearings not described above; Any Legal Land Entitlement Documentation, Easement Documentation Preparation or negotiations, license agreements, etc.; Dry utilities including electrical, telephone, cable, data, fiber, etc.; Postage, deliveries and overnight mail services; Plotting, printing, scanning, or other expenses; Any items not included in the scope of services of this agreement; Any legal documents; In the event that the design process is put on hold by the Client/Contractor in excess of ninety (90) days, when the design process is reinitiated, the Consultant will invoice for remobilization time at a rate equal to ten percent (10%) of the phase of services currently in progress.

10. Final Deliverables: Digital PDF copies of deliverables including renderings, construction documents and specifications.

11. "Meetings" are defined as a physical meeting at a physical location, telephone conference call in lieu of a meeting, web conference meeting, or any other medium where two or more persons review and discuss design decisions for the project. This does not include telephone conversations or emails for the purpose of data and information gathering through the process.

Exhibit "B"
COMPENSATION & FEE SCHEDULE

Phase 1 (to be paid immediately for services rendered with Stone Development)
Professional A/E Fees to Complete Core, Shell, and Tenant Improvement Documents:

Past-due invoices to Stone Development Group, Inc.....	\$38,814.75
MEP To be provided for a fixed fee of.....	\$13,491.50
Civil Engineering To be provided for a fixed fee of.....	\$3,300.50
Redesign – Tenant Improvements To be provided for a fixed fee of.....	\$7,200.00
Permit Processing Hourly as Required.....	\$TBD
Sub-Total	\$62,806.75

Phase 2

Construction Phase:

Structural construction phase services.....	\$2,805.00
Core and Shell Hourly Not To Exceed.....	\$10,000.00
Based upon an anticipated 6-month construction period	
Tenant Improvements Hourly Not To Exceed.....	\$6,000.00
Based upon an anticipated 6-month construction period	
Sub-Total for Construction Phase	\$18,805.00

Total Basic Services **\$81,611.75**

The fees quoted assume no change in scope of the project or basic services.

Hourly Rates: These apply to hourly budgets and supplemental services beyond the scope of services description.

Principal:	\$210.00/hr.
Department Director:	\$195.00/hr.
Professional (Engineer/Architect/Landscape Architect):	\$165.00/hr.
Senior Project Manager/EIT:	\$145.00/hr.
Project Manager:	\$135.00/hr.
Staff CAD Technician/Designer:	\$110.00/hr.
Administrative:	\$85.00/hr.

Exhibit "C"

REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Professional shall comply with each and every condition contained herein. The Professional shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the BEDC. Any Subcontractor(s) hired by the Professional shall maintain insurance coverage equal to that required of the Professional. It is the responsibility of the Professional to assure compliance with this provision. The City of Bastrop Economic Development Corporation accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Professional shall specifically endorse applicable insurance policies as follows:

1. The City of Bastrop Economic Development Corporation shall be named as an additional insured with respect to General Liability and Automobile Liability on a separate endorsement.
2. A waiver of subrogation in favor of The City of Bastrop Economic Development Corporation shall be contained in the Workers Compensation and all liability policies and must be provided on a separate endorsement.
3. All insurance policies shall be endorsed to the effect that The City of Bastrop Economic Development Corporation will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Bastrop Economic Development Corporation as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Bastrop Economic Development Corporation of any material change in the insurance coverage.
7. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Professional may maintain reasonable and customary deductibles, subject to approval by The City of Bastrop Economic Development Corporation.
10. Insurance must be purchased from insurers having a minimum A.M. Best rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Professional's obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Professional shall furnish The City of Bastrop Economic Development Corporation with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Bastrop Economic Development Corporation within ten (10) business days after contract award and prior to starting any work by the successful Professional's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Bastrop Economic Development

Corporation, all required endorsements identified in the sections above shall be sent to the City of Bastrop Economic Development Corporation. The certificate of insurance and endorsements shall be sent to:

City of Bastrop Economic Development Corporation

Attn: Cameron Cox, Chief Executive Officer

301 Highway 71 West, Suite 214

Bastrop, Texas 78602

Exhibit "D"
EVIDENCE OF INSURANCE

Agenda Item: 4.6

AGENDA MEMORANDUM

Meeting Date: February 24, 2020

Agenda Item: Consideration, discussion and possible action to approve Resolution R-2020-07 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with Capital Geotechnical Services PLLC for geotechnical services for the 921 Main Street Project.

Prepared by: BEDC Staff

Geotechnical services are required work necessary for the completion of the 921 Main Street Project.

Attachments:

Draft Resolution

Agreement between the BEDC and Capital Geotechnical Services PLLC

Recommendation – Approve the Resolution as presented.

[RECOMMENDED MOTION] – I move to approve Resolution R-2020-07.



RESOLUTION NO. R-2020-07

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION APPROVING THE TERMS OF A COMMERCIAL CONTRACT WITH CAPITAL GEOTECHNICAL SERVICES PLLC; AUTHORIZING ALL NECESSARY ACTIONS, INCLUDING EXECUTION OF NECESSARY DOCUMENTATION; AND, PROVIDING AN EFFECTIVE DATE AND SAVINGS CLAUSE.

WHEREAS, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Local Government Code, Chapters 501 and 505, et seq., as amended, known as the Development Corporation Act of 1979 (the “Act”), and is acting with the approval of the governing body of the City of Bastrop, Texas (the “City”); and

WHEREAS, after careful evaluation and consideration by the Board, it was determined that the 921 Main Street Project (“Project”) will: (i) improve infrastructure upon a dilapidated and previously abandoned City lot; (ii) promote and develop new and expanded business enterprises; (iii) create primary jobs and full-time employees; and, (iv) facilitate the remediation of the property located at 921 Main Street, Bastrop, Texas, and owned by the BEDC; and

WHEREAS, the Board has reviewed the terms and conditions of the proposed professional services and Commercial Contract (“Contract”) by and between the BEDC and Capital Geotechnical Services PLLC and determined that it fully complies with the statutory requirements that govern the BEDC and is in the best interest of the BEDC to enter such Contract for the construction of 921 Main Street and completion of that Project.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The findings set out above are hereby found to be true and correct and are incorporated herein for all purposes.

SECTION 2. The terms and conditions of the Contract attached hereto as Exhibit “A” are approved.

SECTION 3. The Board authorizes BEDC’s Chief Executive Officer to execute a Contract in substantial form with Exhibit “A” and take those actions, including the execution of all other agreements, instruments or documents reasonably necessary to facilitate the purpose of this Resolution.

SECTION 4. This Resolution is effective upon passage.

DULY RESOLVED AND ADOPTED by the Board of Directors of the Bastrop Economic Development Corporation, this ____ day of _____ 2020.

[SIGNATURE PAGE FOLLOWS]

BASTROP ECONOMIC
DEVELOPMENT CORPORATION

Kathryn Nash, Board Chair

ATTEST:

Sam Kier, Board Secretary

APPROVED AS TO FORM:

Denton, Navarro, Rocha, Bernal & Zech, P.C.
Board Counsel

DRAFT

Exhibit "A"

DRAFT



Project Service Proposal and Contract

Capital Geotechnical Services PLLC
 13200 Pond Springs Road
 Suite G-56, Austin, Texas 78729

Project Name and Address: Office Bldg. Reconstruction _____
 921 Main Street _____
 Bastrop, Texas _____

Client Contact Information: Bastrop Economic Development Corp. _____
 301 Hwy 71 West _____
 Suite 214 _____
 Bastrop, Texas 78602 _____
 Attention: Cameron Cox

Scope of work: Construction geomaterials testing and inspection services:

- Sampling of soils proposed for use as utility trench backfill. Laboratory soil testing for trench backfill (e.g. Proctor testing, soil classification testing)
- Observe and document proof-rolling of pavement area subgrade and slab area subgrade. Measure depths of any soil improvement excavations.
- Drilled shaft observations and documentation
- Compaction testing (moisture-density testing) at the site (trench backfill)
- Field sieve tests of lime treated clay; moisture-density tests of compacted lime treated clay.
- Pre-pour inspections of tilt-wall panels cast on slab (if not performed by Structural Engineer)
- Concrete sampling and testing
- Pre-pour inspections of reinforced concrete elements such as the foundation footings, elevator pit mat foundation and stem walls, and slab patches.



Sampling and testing mortar and grout for CMU wall construction, and pre-pour inspection of CMU wall construction.



Subcontract certified welder (CWI) to inspect structural steel connections.

Geomaterials testing and inspection services are billed on a unit-rate basis at the following unit rates:

Geoprofessional Technician:	\$ 49 per hour (onsite and travel time) (no minimum!)
Vehicle and fuel cost trip charge:	\$ 55 per trip (round-trip)
Nuclear density gauge use:	\$ 30 per day (no per test charge!)
Lab Proctor testing:	\$ 150 per bulk sample
Lab sieve analysis testing:	\$ 62 per bulk sample
Lab plasticity testing (LL, PL):	\$ 62 per bulk sample
Lab wash 200 and #4 sieve testing:	\$ 30 per sample
Concrete compressive strength testing:	\$ 15 per cylinder
Mortar cube compressive strength testing:	\$ 15 per cube
Grout prism compressive strength testing:	\$ 15 per prism
Daily inspection report prep and review:	\$ 20 per report
CWI inspector (3 rd party):	\$ 75 per hour (field and travel time)
Geotechnical Engineer (consulting):	\$ 125 per hour

Invoicing for construction phase observation and testing services is commonly billed on a monthly basis.

Within this letter are the *Terms and Conditions* of service that are an integral part of our proposal. Our insurance carrier requires that we receive written authorization prior to initiation of work, and a signed contract prior to the release of any work product. This letter is the agreement for our services. Your acceptance of this proposal may be indicated by signing below and returning one complete copy of this proposal to us. This proposal expires after 4 months from the issue date.

AGREED TO THIS _____ DAY OF _____, 2020

Bastrop Economic Development Corp.

Signature

Printed Name of "Client"

Title

Terms and Conditions

of service between "CLIENT" and Capital Geotechnical Services PLLC:

Scope:	The scope of services and professional fees described in this proposal are based on information provided by the CLIENT and/or CLIENT's consultants or contractors. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, or if conditions are discovered that could not be foreseen by a reasonable person, the scope of services may change, even while the services are in progress.
Agreements:	In case of conflict or inconsistency between provisions of this proposal (service agreement) and the provisions of any other contract documents, the provisions of this proposal shall control. If CLIENT does not provide a signed copy of this agreement, by the act of authorizing and accepting the services of Capital Geotechnical Services during construction, CLIENT agrees to be fully bound by the terms of this agreement as if signed by CLIENT.
Independent Consultant	Capital Geotechnical serves as an independent professional consultant to CLIENT and shall have control over, and responsibility for, the means and methods for providing the services under this agreement, including the retention of subconsultants and subcontractors. Capital Geotechnical does not serve as CLIENT's agent or representative.
Information Provided by Others	CLIENT waives any claim of liability against Capital Geotechnical regarding any claim for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents and other information in any form provided to us , including information that becomes incorporated into our documents.
Right of Entry	CLIENT warrants that it possesses the authority to provide right-of-entry permission for the performance of our services. CLIENT hereby grants Capital Geotechnical and its subcontractors the right to enter from time to time onto the property owned by CLIENT or others in order for us to perform our services.
Insurance:	Capital Geotechnical Services PLLC maintains professional liability insurance and general liability insurance (i.e. \$1,000,000 limits). Limits of fiscal liability, however, are explicitly stated in this contract due to the small scale of the project.
Termination:	In the event that the project or our services are terminated before completion of our services, Capital Geotechnical Services PLLC shall be paid for services performed up through the date of the termination notice.
Hazardous Materials:	CLIENT will make a reasonable effort to evaluate if hazardous materials are on or near the site and will inform Capital Geotechnical Services PLLC of such hazards before we visit the site.
Applicable Law:	The laws of the State of Texas shall govern the validity, interpretation, and performance of this service agreement and these general conditions.
Indemnity:	The CLIENT will hold Capital Geotechnical Services harmless from all claims, losses, or damages caused by negligent acts or omissions by other parties (i.e. other members of the project team).

Invoices: Payment for our consulting services is due upon presentation of invoice to the Client. Failure to pay within 90 days (3 months) of the date of the invoice shall result in a lien being filed and attached to the property. It may also result in litigation to enforce the contract. In case of any litigation to enforce the contract, Capital Geotechnical Services shall be entitled to recover its attorney fees and court costs, in addition to any contract amount awarded, from the date past due until date of judgment.

Utilities: Client is responsible for identifying the location of all utility lines and subterranean structures within the property. Capital Geotechnical Services PLLC may notify the utility locator notification service (Texas 811) to identify buried utilities that are in the city or county right-of-way and feed the property, but CLIENT is responsible for marking buried utilities within the property.

Site Safety: Client acknowledges that the General Contractor is responsible for project site safety, for example as related to equipment use and staging, material staging, trenches, excavations, drilled shafts, vehicle traffic, building erection, etc., and that the geomaterials observation and testing firm (Capital Geotechnical Services) has no role in inspecting or managing project site safety.

Standard of Care: Services of Capital Geotechnical Services PLLC under this agreement will be performed in a manner consistent with that level of care and skill typically exercised by members of the profession currently practicing under similar conditions in the local area of the project. NO WARRANTY, EXPRESS OR IMPLIED, is made. Client recognizes that project plans can be incomplete or changed without our knowledge and that the interpretations, characterizations, and recommendations are based solely on the information available to Capital Geotechnical Services PLLC at the times of our services.

Limitations of Liability: Unless otherwise established by state law, liability for damages to CLIENT due to professional negligence in the performance of services for a specific project site shall be limited to \$50,000 for the subject project, regardless of indemnity. The CLIENT may negotiate, upon written request to Capital Geotechnical Services, to increase the limit of liability for an additional fee.

CLIENT agrees that Capital Geotechnical shall not be responsible for bodily injury, property damage, or losses arising from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or by any other person.

Construction materials testing and inspection services are independent of design services and are not to be construed as inherently including any review of design. If any of the structural and civil designs do not conform to recommendations in a geotechnical report provided by Capital Geotechnical Services, the professional liability associated with the designs is exclusively with the Structural Engineer, Owner, and Civil Engineer, or other project team members responsible for the designs, and Capital Geotechnical Services accepts no responsibility for the performance of structures based on the designs of others.

Agenda Item: 4.7

AGENDA MEMORANDUM

Meeting Date: February 24, 2020

Agenda Item: Consideration, discussion and possible action to approve Resolution R-2020-08 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer and the City Finance Director to make decisions regarding the movement of reserve funds located in certificates of deposit and money market accounts

Prepared by: BEDC Staff

Mr. Cox and Board Treasurer Sam Kier met with Tracy Waldon, the City of Bastrop's Finance Director, on January 30, 2020. They discussed an investment strategy for the BEDC's reserve funds and how to get the best return on investment. After this meeting, it was determined the best way to proceed would be for Ms. Waldron and Mr. Cox to coordinate the transfer of reserve funds without the necessity of routine Board approval.

Attachments:
Draft Resolution

Recommendation – Approve the Resolution as presented.

[RECOMMENDED MOTION] – I move to approve Resolution R-2020-08.



RESOLUTION NO. R-2020-08

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE CHIEF EXECUTIVE OFFICER AND THE CITY OF BASTROP FINANCE DIRECTOR TO MAKE DECISIONS REGARDING THE MOVEMENT OF RESERVE FUNDS LOCATED IN CERTIFICATES OF DEPOSIT AND MONEY MARKET ACCOUNTS.

WHEREAS, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”); and

WHEREAS, to fulfill its public purpose in attracting qualifying projects under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, the BEDC requires certain professional services, including without limitation, maintaining its reserve funds in interest bearing accounts with various financial institutions, which includes certificates of deposits and money market accounts; and

WHEREAS, the Board understands that these funds are located in multiple accounts with revolving maturity dates requiring the City of Bastrop Finance Director and the BEDC Chief Executive Officer to decide the best type of account for interest rates and BEDC fiscal needs for each year; and

WHEREAS, after careful evaluation and consideration by the Board, it has determined that these services and this support can be provided most beneficially, efficiently and economically by the Chief Executive Office and the City Finance Director making these decisions jointly and without Board approval other than the authority granted herein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The Board hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

SECTION 2. The Board hereby finds that both the City of Bastrop’s Finance Director and the BEDC’s Chief Executive Officer shall have the combined and joint authority to collectively decide the location, financial institution, type of account and amount of funds to be maintained in each interest bearing account(s) for the reserve funds of the BEDC.

SECTION 3. This Resolution is effective upon passage.

PASSED AND APPROVED on the _____ day of _____ 20____, by the Board of Directors of the Bastrop Economic Development Corporation.

[SIGNATURE PAGE FOLLOWS]

BASTROP ECONOMIC
DEVELOPMENT CORPORATION

Kathryn Nash, Board Chair

ATTEST:

Sam Kier, Board Treasurer

APPROVED AS TO FORM:

Denton, Navarro, Rocha, Bernal & Zech, P.C.
Board Counsel

DRAFT

Agenda Item: 4.8

AGENDA MEMORANDUM

Meeting Date: February 24, 2020

Agenda Item: Consideration, discussion and possible action to approve Resolution R-2020-09 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into an AIA construction contract with Sabre Commercial for general contractor services for the 921 Main Street Project with a guaranteed maximum price to be determined.

Prepared by: BEDC Staff

This agreement is a standard American Institute of Architects (AIA) construction contract that is awaiting final approval by the BEDC Board and legal counsel. This contract is necessary for the beginning and completion of construction of the project at 921 Main Street.

The Board granted authority for the CEO to negotiate a contract with Sabre Commercial at the January 27th Board meeting via Resolution R-2020-03.

Attachments:
Draft Resolution
Agreement

Recommendation – Approve the Resolution as presented.

[RECOMMENDED MOTION] – I move to approve Resolution R-2020-09.



RESOLUTION NO. R-2020-09

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO ENTER INTO AN AIA CONSTRUCTION CONTRACT WITH SABRE COMMERCIAL FOR GENERAL CONTRACTOR SERVICES FOR THE 921 MAIN STREET PROJECT, INCLUDING EXECUTION OF NECESSARY DOCUMENTATION; AND, PROVIDING AN EFFECTIVE DATE, SAVINGS CLAUSE, AND GUARANTEED MAXIMUM PRICE.

WHEREAS, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Local Government Code, Chapters 501 and 505, et seq., as amended, known as the Development Corporation Act of 1979 (the “Act”), and is acting with the approval of the governing body of the City of Bastrop, Texas (the “City”); and

WHEREAS, after careful evaluation and consideration by the Board, it was determined that a project (“Project”) proposed by Sabre Commercial, Inc. (“Company”) will: (i) improve infrastructure upon a dilapidated and previously abandoned City lot; (ii) promote and develop new and expanded business enterprises; (iii) create primary jobs and full-time employees; and, (iv) facilitate the remediation of the property located at 921 Main Street, Bastrop, Texas, and owned by the BEDC; and

WHEREAS, the Board has reviewed the terms and conditions of the proposed professional services agreement with a Texas corporation and finds the AIA Construction Contract (“Contract”) by and between the BEDC and Sabre Commercial, Inc., fully complies with the statutory requirements that govern the BEDC and is in the best interest of the BEDC to enter into such Contract for the purposes of completing the construction project at 921 Main Street, Bastrop, Texas, 78602.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The findings set out above are hereby found to be true and correct and are incorporated herein for all purposes.

SECTION 2. The Board authorizes BEDC’s Chief Executive Officer to execute a Contract in substantial form with Exhibit “A” and take those actions, including the execution of all other agreements, instruments or documents reasonably necessary to facilitate the purpose of this Resolution.

SECTION 3. This Resolution is effective upon passage.

DULY RESOLVED AND ADOPTED by the Board of Directors of the Bastrop Economic Development Corporation, this ____ day of _____ 2020.

[SIGNATURE PAGE FOLLOWS]

BASTROP ECONOMIC
DEVELOPMENT CORPORATION

Kathryn Nash, Board Chair

ATTEST:

Sam Kier, Board Secretary

APPROVED AS TO FORM:

Denton, Navarro, Rocha, Bernal & Zech, P.C.
Board Counsel

Exhibit "A"

DRAFT

AIA[®] Document A102[™] – 2017

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

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

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

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

Sabre Commercial, Inc.
2001 Chicon Street
Austin, TX 78703
512-767-7400

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

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

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

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	RELATIONSHIP OF THE PARTIES
4	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
5	CONTRACT SUM
6	CHANGES IN THE WORK
7	COSTS TO BE REIMBURSED
8	COSTS NOT TO BE REIMBURSED
9	DISCOUNTS, REBATES AND REFUNDS
10	SUBCONTRACTS AND OTHER AGREEMENTS
11	ACCOUNTING RECORDS
12	PAYMENTS
13	DISPUTE RESOLUTION
14	TERMINATION OR SUSPENSION
15	MISCELLANEOUS PROVISIONS
16	ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, AIA A201-2017 General Conditions of the Contract as modified by the parties, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, the Contractor's Qualifications shall take precedence followed by this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's

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interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

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

The date of commencement of the Work shall be the later of (1) the date of the written notice to proceed issued by the Owner, (2) receipt of the building permit or (3) the date the Owner has provided Contractor satisfactory evidence of financing pursuant to Article 2.2.1 of the General Conditions

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

§ 4.3 Substantial Completion

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

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

By the following date:

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

Portion of Work	Substantial Completion Date
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§ 4.3.3 The Contract Time includes () days of delay due to adverse weather conditions. In the event the Contractor's performance of the Work is delayed more than () days due to adverse weather conditions, the Contract Time shall be extended on a day-for-day basis for each additional day of delay due to adverse weather conditions.

§ 4.3.4 If the Work is occupied or otherwise utilized by Owner, before Substantial Completion of the Work, the Work shall be deemed to be Substantially Complete.

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

ARTICLE 5 CONTRACT SUM

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

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

[is the stipulated amount of \$ _____.] OR [shall be _____% of the Cost of the Work.]

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

Contractor shall be paid [redacted] % of the Cost of the Work attributable to additive Change Orders or Construction Change Directives. [if stipulated fee insert: The Contractor's Fee shall not be reduced by deductive Change Orders or Construction Change Directives.]

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

Any deductive Change Orders or Construction Change Directives shall not include any reduction in Contractor's general conditions costs if there is no corresponding reduction or reduction in Contractor's Fee.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed the standard rental rate paid at the place of the Project.

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

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 5.1.6 Liquidated damages, if any: (Insert terms and conditions for liquidated damages, if any.)

[DELETE IF NO LD'S] If Contractor does not achieve Substantial Completion of the entire Work within the Contract Time, subject to adjustments as provided in the Contract Documents, Contractor shall pay Owner liquidated damages equal to [redacted] and No/100 Dollars (\$ [redacted].00) per day for each day following the scheduled Substantial Completion date, as adjusted as provided in the Contract Documents, until and including the day Contractor achieves Substantial Completion of the entire Work (the "Delay Liquidated Damages"). Owner and Contractor acknowledge and agree that the damages to be incurred by Owner in the event Substantial Completion of the entire Work is not achieved within the Contract Time is difficult to ascertain and that the Delay Liquidated Damages are (i) a reasonable estimate of fair compensation to Owner for the losses likely to be suffered by Owner in the event of such delay, (ii) in the nature of liquidated damages, and not a penalty, (iii) fair and reasonable, and (iv) these Delay Liquidated Damages are an exclusive remedy for delay by Contractor and Owner shall not be entitled to recover actual or other delay damages in addition to Delay Liquidated Damages as a result of the late Substantial Completion of the Work.

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

[DELETE IF NO BONUS] If Contractor achieves Substantial Completion of the Work before expiration of the Contract Time as adjusted, Owner shall pay Contractor an early completion bonus of \$ [redacted]/day for each day in advance of the expiration of the Contract Time as adjusted that the Work is Substantially Complete.

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed (\$ [redacted]), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

If upon Final Completion the Cost of the Work plus the Contractor's Fee is less than the Guaranteed Maximum Price (as each item may be adjusted hereunder), the difference shall be "Savings". Any Savings shall be shared 50% to Owner and 50% to Contractor and Savings, if any, shall be paid at the time of Final Payment.

§ 5.2.2 Alternates

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

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

Item	Price	Conditions for Acceptance
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§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price: See Exhibit "C". <i>(Identify each allowance.)</i>		
-----------------------------------------------------------------------------------------------------------------------------	--	--

Item	Price
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§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based: <i>(Identify each assumption.)</i>	
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See Exhibits "B" and "D".

§ 5.2.5 The Guaranteed Maximum Price includes the costs required by the Contract Documents. The Guaranteed Maximum Price does not include changes in scope, systems, kinds and quality of materials, finishes or equipment or further development of the Construction Documents, all of which, if required, shall be incorporated by Change Order.

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

ARTICLE 6 CHANGES IN THE WORK

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

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

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

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7.

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

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

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§ 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work.

§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the
(Paragraphs deleted)
Work.

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel (including Contractor's Vice-Presidents and Project Managers) engaged at factories the Contractor's principal or field offices, workshops or while traveling, in managing and cost documenting the Work, expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. Such costs are hereinafter collectively referred to as "Labor Burden". Labor Burden is stipulated by the parties to be 42% of the total wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 for craft personnel and 38% of the total wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 for administrative personnel.

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

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

§ 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Contractor shall have the right to bid upon any subcontract Work and will be treated as a Subcontractor for the purpose of awarding particular scopes of the subcontract Work. Contractor's subcontract price for such scope(s) of Work shall be treated as a lump sum subcontract for the purposes of this Section 7.3.

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and

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the costs of transportation, installation, dismantling, minor repairs, replacements, and removal of such temporary facilities, machinery, equipment, and hand tools.

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

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

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Commercial General Liability, Automobile Liability, Contractor's Professional Liability, Contractor's Pollution Liability, Miscellaneous liability and Excess Liability insurance policies shall be charged at 0. % of the sum of (i) the Cost of the Work less such insurance and (ii) the Contractor's Fee. Builder's Risk insurance shall be charged at 0. % of the sum of (i) the Cost of the Work and (ii) the Contractor's Fee. Payment and Performance Bonds, if required, will be charged as Cost of the Work at Contractor's cost.

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

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

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

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

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

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

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

§ 7.6.6 Costs for communications services, internet connection, electronic equipment, and software, directly related to the Work and located at the site.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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User Notes:

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

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

§ 7.6.11 Data processing costs related to the Work.

§ 7.6.12 Costs of any liquidated damages that may be assessed.

§ 7.6.13 Costs for performing surveying, field engineering and layout services Contractor is required to perform.

§ 7.6.14 Costs for testing and A/C system power.

§ 7.6.15 Costs for Storm Water Pollution Prevention Plan, devices and construction drainage control and water control.

§ 7.6.16 Costs for all temporary utilities.

§ 7.6.17 Costs for hoisting.

§ 7.6.18 Costs for fall protection and compliance with trench safety requirements.

§ 7.7 Other Costs and Emergencies

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

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, except for the first \$50,000 of cost, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;

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- .2 Deleted;
- .3 Expenses of the Contractor's principal office and offices other than the site office except as provided in Article 7;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Except as provided in Article 7.7.1, any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders or Construction Change Directives approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

§ 10.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The

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Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

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

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the twenty-fifth day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Fifteenth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Twenty (20) days after the Architect receives the Application for Payment.

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

§ 12.1.4 The Application for Payment shall be made in the AIA G702 and G703 format based on estimated percentages of completion. Upon final completion of the Work the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

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

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

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

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

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

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- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of the Guaranteed Maximum Price allocable to specially fabricated materials, furniture, fixtures and equipment, or other orders requiring advance deposits or interim payment before completion and/or delivery, which advances shall be made as required by the applicable subcontract or purchase order;
- .4 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .5 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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

(Paragraph deleted)

- .3 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;
- .4 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

§ 12.1.8 Retainage

§ 12.1.8.1 For each progress payment made prior to Substantial Completion of the Work and subject to the terms of this Section 12.1.8 below, 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.)

[_____ percent (____ %)] The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.8.1.1 The following items are not subject to retainage:

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

Notwithstanding the foregoing, no retainage shall be withheld for payments made for items in 12.1.7.3 above and retainage for earthwork, installation of utilities for the site (not the building), structural steel and concrete work (including pre-cast concrete if any) shall be reduced to zero percent (0.00%) within sixty (60) days from the completion of such Work. Additionally, no retainage shall be withheld from Contractor on direct material purchases by Contractor for concrete and rebar. **[Delete 12.1.11 if Tenant Finish contract]**

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

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

Upon completion of fifty percent (50%) of the Work, the amount of the retainage set forth in Section 21.1.8.1 above shall be reduced to five percent (5%).

§ 12.1.8.3 Except as set forth in this Section 12.1.8.3, upon Substantial 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 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Upon Substantial Completion, the Owner shall pay Contractor all outstanding retainage less 150% of the mutually agreed upon value of outstanding punch list items.

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

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

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

§ 12.1.12 In taking action on the Contractor's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 Final Payment

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

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2
- .4 the Surety, if any, has consented to Final Payment.

§ 12.2.2 Within 21 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

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

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

§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. Pending a

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final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect’s final Certificate for Payment.

§ 12.2.3 The Owner’s final payment to the Contractor shall be made pursuant to Article 12.2.1 above.

§ 12.2.4 If, subsequent to final payment, and at the Owner’s request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor’s Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

§ 12.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

The Prime Rate then published by _____ Bank, _____, plus two percent (2%) per annum

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

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

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

§ 13.2 Binding Dispute Resolution

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

(Check the appropriate box.)

- Arbitration pursuant to Section 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

§ 13.3 Attorneys’ Fees

If one party to this Agreement institutes litigation or arbitration with the other party arising out of this Agreement, or performance under or any alleged breach of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable and necessary attorneys’ fees and expenses. The prevailing party is that party which, in light of the claims, counterclaims and defenses asserted, is afforded greater relief by arbitration award or court judgment.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

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

§ 14.1.2 Termination by the Owner for Cause

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

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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

§ 14.1.3 Termination by the Owner for Convenience

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

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

§ 14.2 Suspension

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

§ 15.2 The Owner’s representative:

(Name, address, email address and other information)

§ 15.3 The Contractor’s representative:

(Name, address, email address and other information)

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

§ 15.5 Insurance and Bonds

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

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

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

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

§ 15.7 Other provisions:

§15.7.1 Value Engineering: The Contractor may assist the Owner and its designers with Value Engineering as part of the Project budgeting process. The term "value engineering" used in conjunction with this Agreement or the Project or the Work has its commonly accepted meaning within the construction industry and does not imply the practice of architecture or engineering with or without a license. Except to the extent that the Contractor has expressly assumed the responsibility for certain design/build Work, the Contractor is not required, in connection with value engineering, to render services that would constitute the professional practice of architecture or engineering, and any value engineering activities or suggestions of Contractor or its Subcontractors shall be reviewed and approved by an architect or engineer registered or licensed in the state where the Project is located for or on behalf of the Owner and, if adopted by the Owner, shall be incorporated into the Contract Documents in the form of documents sealed by an architect or engineer registered or licensed in the state where the Project is located. Except to the extent that the Contractor has expressly assumed the responsibility for certain design/build Work, the Contractor shall have no liability or responsibility for the adequacy or sufficiency of the value engineering activities or proposals of Contractor or its Subcontractors.

§15.7.2 Owner warrants and represents that all Drawings and Specifications for the Work are accurate, complete, correct and sufficient.

§15.7.3 The Close-Out Documents will be provided to the Owner in one of the following methods [check one]:

- Hard Copy
 Electronic Copy
 Owner Specific, as follows: _____

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents as modified by the parties:

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A102™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4

(Paragraphs deleted)

Intentionally deleted

- .5 Drawings

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User Notes:

(879780952)

Number	Title	Date
	See Exhibit "F".	
.6	Specifications	

Section	Title	Date	Pages
	See Exhibit "E".		
.7	Addenda, if any:		

Number	Date	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 16.		

- .8 Other Exhibits:
(Check all boxes that apply.)
- AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
<input type="checkbox"/> Supplementary and other Conditions of the Contract:		

Document	Title	Date	Pages
.9 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.)

- Exhibit "A": Insurance and Bonds, AIA A102 Exhibit A, as modified by the parties
- Exhibit "B": Contractor’s GMP Estimate () pages
- Exhibit "C": Allowances () page
- Exhibit "D": Contractor’s Qualifications/Outline Specifications () pages
- Exhibit "E": Project Specifications
- Exhibit "F": List of Project Drawings
- Exhibit "G": Construction Schedule
- Exhibit "H": Legal Description
- Exhibit "I": AIA A201 (2017 ed.) as modified by the parties
- Exhibit "J": Contractor’s sample insurance certificate

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

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)



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/

Additions and Deletions Report for AIA® Document A102™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:44:28 ET on 02/10/2020.

PAGE 1

[Redacted text block]

...

Sabre Commercial, Inc.
2001 Chicon Street
Austin, TX 78703
512-767-7400

...

[Redacted text block]

...

[Redacted text block]

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The Contract Documents consist of this Agreement, AIA A201-2017 General Conditions of the Contract (~~General, Supplementary, and other Conditions~~), as modified by the parties, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, the Contractor's Qualifications shall take precedence followed by this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

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[] — The date of this Agreement.

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

Established as follows:

...

~~If a The date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement shall be the later of (1) the date of the written notice to proceed issued by the Owner, (2) receipt of the building permit or (3) the date the Owner has provided Contractor satisfactory evidence of financing pursuant to Article 2.2.1 of the General Conditions~~

...

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

...

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6. The Contract Time includes () days of delay due to adverse weather conditions. In the event the Contractor's performance of the Work is delayed more than () days due to adverse weather conditions, the Contract Time shall be extended on a day-for-day basis for each additional day of delay due to adverse weather conditions.

§ 4.3.4 If the Work is occupied or otherwise utilized by Owner, before Substantial Completion of the Work, the Work shall be deemed to be Substantially Complete.

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

...

[is the stipulated amount of \$.] OR [shall be % of the Cost of the Work.]

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Contractor shall be paid % of the Cost of the Work attributable to additive Change Orders or Construction Change Directives. [if stipulated fee insert: The Contractor's Fee shall not be reduced by deductive Change Orders or Construction Change Directives.]

...

Any deductive Change Orders or Construction Change Directives shall not include any reduction in Contractor's general conditions costs if there is no corresponding reduction or reduction in Contractor's Fee.

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

...

[DELETE IF NO LD'S] If Contractor does not achieve Substantial Completion of the entire Work within the Contract Time, subject to adjustments as provided in the Contract Documents, Contractor shall pay Owner liquidated damages equal to and No/100 Dollars (\$.00) per day for each day following the scheduled Substantial Completion date, as adjusted as provided in the Contract Documents, until and including the day Contractor achieves Substantial Completion of the entire Work (the "Delay Liquidated Damages"). Owner and Contractor acknowledge and agree that the damages to be incurred by Owner in the event Substantial Completion of the entire Work is not achieved within the Contract Time is difficult to ascertain and that the Delay Liquidated Damages are (i) a reasonable estimate of fair compensation to Owner for the losses likely to be suffered by Owner in the event of such delay, (ii) in the nature of liquidated damages, and not a penalty, (iii) fair and reasonable, and (iv)

these Delay Liquidated Damages are an exclusive remedy for delay by Contractor and Owner shall not be entitled to recover actual or other delay damages in addition to Delay Liquidated Damages as a result of the late Substantial Completion of the Work.

...

[DELETE IF NO BONUS] If Contractor achieves Substantial Completion of the Work before expiration of the Contract Time as adjusted, Owner shall pay Contractor an early completion bonus of \$ /day for each day in advance of the expiration of the Contract Time as adjusted that the Work is Substantially Complete.

...

If upon Final Completion the Cost of the Work plus the Contractor's Fee is less than the Guaranteed Maximum Price (as each item may be adjusted hereunder), the difference shall be "Savings". Any Savings shall be shared 50% to Owner and 50% to Contractor and Savings, if any, shall be paid at the time of Final Payment.

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§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price: See Exhibit "C".

...

See Exhibits "B" and "D".

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

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

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

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

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

Work.

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel ~~engaged at factories, workshops or while traveling, in (including Contractor's Vice-Presidents and Project Managers) engaged at factories the Contractor's principal or field offices, workshops or while traveling, in managing and cost documenting the Work, expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

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

agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. Such costs are hereinafter collectively referred to as "Labor Burden". Labor Burden is stipulated by the parties to be 42% of the total wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 for craft personnel and 38% of the total wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 for administrative personnel.

...

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

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Contractor shall have the right to bid upon any subcontract Work and will be treated as a Subcontractor for the purpose of awarding particular scopes of the subcontract Work. Contractor's subcontract price for such scope(s) of Work shall be treated as a lump sum subcontract for the purposes of this Section 7.3.

...

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

...

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

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§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Commercial General Liability, Automobile Liability, Contractor's Professional Liability, Contractor's Pollution Liability, Miscellaneous liability and Excess Liability insurance policies shall be charged at 0. % of the sum of (i) the Cost of the Work less such insurance and (ii) the Contractor's Fee. Builder's Risk insurance shall be charged at 0. % of the sum of (i) the Cost of the Work and (ii) the Contractor's Fee. Payment and Performance Bonds, if required, will be charged as Cost of the Work at Contractor's cost.

...

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

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

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§ 7.6.11 Data processing costs related to the Work.

§ 7.6.12 Costs of any liquidated damages that may be assessed.

§ 7.6.13 Costs for performing surveying, field engineering and layout services Contractor is required to perform.

§ 7.6.14 Costs for testing and A/C system power.

§ 7.6.15 Costs for Storm Water Pollution Prevention Plan, devices and construction drainage control and water control.

§ 7.6.16 Costs for all temporary utilities.

§ 7.6.17 Costs for hoisting.

§ 7.6.18 Costs for fall protection and compliance with trench safety requirements.

...

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, except for the first \$50,000 of cost, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

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- ~~.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval; Deleted;~~
- .3 Expenses of the Contractor's principal office and offices other than the site office; office except as provided in Article 7;

...

- .7 ~~Any~~ Except as provided in Article 7.7.1, any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders or Construction Change Directives approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

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

...

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the twenty-fifth day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the Fifteenth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than (—) Twenty (20) days after the Architect receives the Application for Payment.

...

§ 12.1.4 ~~With each Application for Payment, The Application for Payment shall be made in the AIA G702 and G703 format based on estimated percentages of completion. Upon final completion of the Work the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.~~

...

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

...

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values completed.

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- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of the Guaranteed Maximum Price allocable to specially fabricated materials, furniture, fixtures and equipment, or other orders requiring advance deposits or interim payment before completion and/or delivery, which advances shall be made as required by the applicable subcontract or purchase order;
- .4 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 .5 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

...

- .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 ;
- .3 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;
- .5 .4 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

...

§ 12.1.8.1 For each progress payment made prior to Substantial Completion of the Work, Work and subject to the terms of this Section 12.1.8 below, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

...

[_____ percent (____ %)] The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

...

Notwithstanding the foregoing, no retainage shall be withheld for payments made for items in 12.1.7.3 above and retainage for earthwork, installation of utilities for the site (not the building), structural steel and concrete work (including pre-cast concrete if any) shall be reduced to zero percent (0.00%) within sixty (60) days from the completion of such Work. Additionally, no retainage shall be withheld from Contractor on direct material purchases by Contractor for concrete and rebar. **[Delete 12.1.11 if Tenant Finish contract]**

...

Upon completion of fifty percent (50%) of the Work, the amount of the retainage set forth in Section 21.1.8.1 above shall be reduced to five percent (5%).

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Upon Substantial Completion, the Owner shall pay Contractor all outstanding retainage less 150% of the mutually agreed upon value of outstanding punch list items.

...

- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.12.2.2
- .4 the Surety, if any, has consented to Final Payment.

§ 12.2.2 Within 30-21 days of the Owner’s receipt of the Contractor’s final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

...

§ 12.2.2.3 If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Contractor’s final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to ~~request mediation demand arbitration~~ of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. ~~A request for mediation shall be made by the Contractor within 30 days after the Contractor’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect’s final Certificate for Payment.~~

§ 12.2.3 The Owner’s final payment to the Contractor shall be made ~~no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:~~ pursuant to Article 12.2.1 above.

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~~%—~~The Prime Rate then published by _____ Bank, _____, plus two percent (2%) per annum

...

Arbitration pursuant to Section 15 of AIA Document A201–2017

...

~~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.~~ **§ 13.3 Attorneys’ Fees**

If one party to this Agreement institutes litigation or arbitration with the other party arising out of this Agreement, or performance under or any alleged breach of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable and necessary attorneys’ fees and expenses. The prevailing party is that party which, in light of the claims, counterclaims and defenses asserted, is afforded greater relief by arbitration award or court judgment.

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[Redacted]

...

[Redacted]

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

...

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

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

...

§15.7.1 Value Engineering: The Contractor may assist the Owner and its designers with Value Engineering as part of the Project budgeting process. The term "value engineering" used in conjunction with this Agreement or the Project or the Work has its commonly accepted meaning within the construction industry and does not imply the practice of architecture or engineering with or without a license. Except to the extent that the Contractor has expressly assumed the responsibility for certain design/build Work, the Contractor is not required, in connection with value engineering, to render services that would constitute the professional practice of architecture or engineering, and any value engineering activities or suggestions of Contractor or its Subcontractors shall be reviewed and approved by an architect or engineer registered or licensed in the state where the Project is located for or on behalf of the Owner and, if adopted by the Owner, shall be incorporated into the Contract Documents in the form of documents sealed by an architect or engineer registered or licensed in the state where the Project is located. Except to the extent that the Contractor has expressly assumed the responsibility for certain design/build Work, the Contractor shall have no liability or responsibility for the adequacy or sufficiency of the value engineering activities or proposals of Contractor or its Subcontractors.

§15.7.2 Owner warrants and represents that all Drawings and Specifications for the Work are accurate, complete, correct and sufficient.

§15.7.3 The Close-Out Documents will be provided to the Owner in one of the following methods [check one]:

- Hard Copy
- Electronic Copy
- Owner Specific, as follows: _____

...

§ 16.1 This Agreement is comprised of the following ~~documents;~~ documents as modified by the parties:

...

.4 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

Intentionally deleted

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See Exhibit "F".

...

See Exhibit "E".

...

Exhibit "A": Insurance and Bonds, AIA A102 Exhibit A, as modified by the parties

Exhibit "B": Contractor's GMP Estimate () pages

Exhibit "C": Allowances () page

Exhibit "D": Contractor's Qualifications/Outline Specifications () pages

Exhibit "E": Project Specifications

Exhibit "F": List of Project Drawings

Exhibit "G": Construction Schedule

Exhibit "H": Legal Description

Exhibit "I": AIA A201 (2017 ed.) as modified by the parties

Exhibit "J": Contractor's sample insurance certificate

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Matthew E. Lutz, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:44:28 ET on 02/10/2020 under Order No. 9724604502 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A102™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA[®] Document A201[™] – 2017

General Conditions of the Contract for Construction

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

[Redacted project information]

THE OWNER:
(Name, legal status and address)

[Redacted owner information]

THE ARCHITECT:
(Name, legal status and address)

[Redacted architect information]

TABLE OF ARTICLES

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

ADDITIONS AND DELETIONS:

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

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

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

- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES



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(811956296)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. . . Notwithstanding the foregoing, the Contractor is responsible for certain Mechanical, Electrical and Plumbing design

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build services as described in the A102 Agreement and its Exhibits (collectively referred to hereinafter as the "MEP Design") pursuant to design criteria established by the Architect in the Contract Documents. Such MEP Design shall be performed by registered design professionals retained by Contractor's MEP subcontractors. **[DELETE IF NO DESIGN BUILD MEP IN WORK SCOPE]** In the event of a conflict or ambiguity between the Contract Documents, the Contractor's Qualifications referred to in the Agreement shall control. In the event the geotechnical report is a Contract Document, the Drawings and Specifications setting forth the Work to be performed shall control over any conflicting recommendations contained in the geotechnical report.

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications (but excluding Drawings and Specifications, if any, prepared by or for Contractor or its Subcontractors pursuant to any Design-Build obligations Contractor may have under the Contract Documents), and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. Drawings and Specifications prepared as part of the MEP Design shall remain the property of the Contractor and/or MEP subcontractors. However, Contractor hereby grants and shall cause the MEP Design professionals and subcontractors to grant to Owner a royalty free, non-exclusive license to utilize the MEP Design Drawings and Specifications for the construction, operation, and maintenance of the Project. **[DELETE IF NO MEP DESIGN/BUILD IN WORK SCOPE]**

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

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if (i) delivered in person, (ii) three days following the post marked date if sent by mail, (iii) by courier, or (iv) by electronic or facsimile transmission if a

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method for electronic transmission is set forth in the Agreement but electronic or facsimile transmissions sent after 5:00 p.m. recipient's time shall be deemed delivered the next day.

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon any necessary protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form..

(Paragraphs deleted)

§ 1.8 Deleted.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Owner hereby represents and warrants to Contractor that Owner has absolute fee simple title in and to the property on which the Project is located

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract, including but not limited to the information described in Texas Business and Commerce Code §56.054(d). The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract, including but not limited to the information described in Texas Business and Commerce Code §56.054(d). If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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

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

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§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, air rights, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Owner shall secure and pay for "impact" or "front footage" permits and fees, all charges for bringing utility services to the site and other charges of a capital nature required by utility providers or governmental authorities. § 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, including benchmarks and horizontal and vertical control points, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness so as to not delay the Work. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents and design consultant Auto-CAD files (for preparation of shop drawings) for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor except that Contractor is entitled to rely upon the results of soils, concrete and welding tests..

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

[DELETE HIGHLIGHTED TEXT IF NO MEP DESIGN BUILD]

§ 3.2.3 The Contractor is not, **except with respect to the MEP Design**, required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, building codes, LEED requirements, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. **[DELETE HIGHLIGHTED TEXT IF NO MEP DESIGN BUILD]**

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. The Contractor shall not, **except with respect to the MEP Design**, be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, building codes, LEED requirements, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect. **[DELETE HIGHLIGHTED TEXT IF NO MEP DESIGN BUILD]**

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures except as provided below. If the Contractor determines that such means,

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methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures and shall not proceed with that portion of the Work without further written instructions from the Architect. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage to the extent caused by those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The foregoing warranties shall terminate one year after Substantial Completion of the Work except in the case of an applicable special warranty expressly required by the Contract Documents. **OTHER THAN THE FOREGOING, THE CONTRACTOR MAKES NO OTHER WARRANTY, REPRESENTATION OR GUARANTEE, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND ANY AND ALL SUCH OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR SUITABILITY FOR INTENDED USE, ARE EXPRESSLY DISCLAIMED.**

§ 3.5.2 All assignable material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be assigned to the Owner on a non-exclusive basis, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

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

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§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Guaranteed Maximum Price or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. If the conditions encountered are materially different, the Guaranteed Maximum Price and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Guaranteed Maximum Price or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect and any required governmental entity. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner or permitted by applicable governmental authorities but shall continue with all other operations that do not affect those remains or features to the extent permitted by applicable law. The Guaranteed Maximum Price and Contract Time shall be equitably adjusted due to delays or increased costs arising from the existence of such remains or features.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness in sufficient time to avoid delay in the Work.

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent.

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect ten (10) days to review submittals.

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not

expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed or registered design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

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

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§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, **except with respect to the MEP Design**, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect. **[DELETE HIGHLIGHTED TEXT IF NO MEP DESIGN BUILD]**

§ 3.18 Indemnification

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

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

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§ 3.18.3 The obligations of the Contractor under this Section 3.18 shall not extend to the liability of the Architect, or the Architect's consultants, or the agents, servants or employees of any of them, arising out of: (i) defects in plans, designs, or specifications prepared, approved, or used by the Architect or its consultants; or (ii) negligence of the Architect or its consultants in the rendition or conduct of professional duties called for or arising out of the Contract Documents and the plans, designs, or specifications that are a part of the Contract Documents.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or Separate Contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or operating performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

§ 4.2.11 The Architect will interpret and initially decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness so as to not delay the Work. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with the Section 4.2.11, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until five (5) days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness so as to not delay the Work but in no event more than five (5) days after the written request is made. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design and including any principal portion of the Work to be self-performed by Contractor to be administered as a lump sum subcontract. Within 7 days of receipt of the information, the Architect shall notify the Contractor whether the Owner has reasonable objection to any such proposed person or entity. Failure of the Architect to provide notice within the 7-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

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Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner shall not to perform construction or operations related to the Project with the Owner's own forces, or with Separate Contractors without the Contractor's prior written consent. The terms of any such agreements with Separate Contractor(s) shall be substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation, provided, however, notwithstanding the terms of any Separate Contractor agreement, including any terms similar to those of this Article 6 or other terms regarding coordination and scheduling of work, Contractor's Work and Contractor's schedule for the Work shall have priority over the construction schedule of any Separate Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. Contractor has no obligation to make available its cranes, hoists, or elevators or any other equipment to Owner's separate contractors. In the event Contractor allows any separate contractors of Owner to utilize Contractor's equipment, such separate contractor shall provide Contractor with such indemnities and additional insured coverage as may be required by Contractor. Furthermore, the Owner shall require its Separate Contractors to provide their own temporary facilities, waste removal, and pay for their utility consumption.

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

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

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

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect the Contractor's construction with theirs as required by the Contract Documents provided, however, if the Separate Contractors are to perform tenant finish work, they shall not be permitted to commence such work until Contractor has consented to such commencement.

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

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

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

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otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes or it becomes apparent that the proposed minor change in the Work will affect the Guaranteed Maximum Price or Contract Time, the Contractor shall notify the Architect and shall not proceed or continue to implement the change in the Work.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values other than approved Change Orders shall be submitted to the Architect, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect reasonably require, such as copies of requisitions, and releases and waivers of liens from Subcontractors in a form as agreed by Contractor or as required by applicable law, and shall reflect retainage if provided for in the Contract Documents. Any lien waiver(s), certifications, or affidavits required from Contractor (i) are conditioned upon actual receipt of the funds in exchange for which it was given and (ii) will apply only to the extent of claims concerning the payment in exchange for which it was given, but not to other claims or potential claims.

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

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

§ 9.3.2 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment shall similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Owner shall also advance funds to Contractor to enable Contractor to pay deposits required for the release of fabrication and manufacturing of long lead items including but not limited to elevators.

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

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;

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

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

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

(Paragraph deleted)

§ 9.6 Progress Payments

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

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

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

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

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from such direct loss, liability, damage or expense, including reasonable attorney's fees, arising out of any lien claim or other claim for payment by any Subcontractor or supplier out of the amount paid to the Contractor on account of such Subcontractor's or supplier's portion of the Work. Upon receipt of notice of a lien

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claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted. Upon notification by Contractor of payment of such notice of lien claim or other claim for payment or the filing of an appropriate surety bond for the property, payment withheld due to such lien or claim will be made or released to Contractor for amounts previously withheld due to such claims.

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied or will be paid or otherwise settled from the proceeds of the final payment, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations for Work for which Contractor has received payment from Owner, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be required by Section 9.3.1 above. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such a recorded lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, and, if Owner executes a Change Order equitably adjusting the Guaranteed Maximum Price and/or Contract Time for any increase in the cost of and/or time required for completion of the Work as a result thereof, the Contractor shall to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 or substances. If the Contractor encounters a hazardous material or substance that was not brought to the Project site by Contractor or its Subcontractors and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from such a material or substance, including but not limited to asbestos or

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polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

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

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. Notwithstanding the foregoing or Exhibit A, Contractor's Commercial General Liability coverage shall have limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, shall be named as additional insureds under the Contractor's commercial general liability policy as described in Exhibit A to the Agreement.

§ 11.1.2 The Contractor, if required by Exhibit A, shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and

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maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. The Owner shall pay for the cost of such bonds. The Guaranteed Maximum Price shall be increased by Change Order for the cost of such bonds unless the cost of such bonds has been included in a Contractor's "GMP Estimate" attached as an exhibit to the Agreement.

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

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

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Notwithstanding the foregoing or Exhibit A, Contractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Guaranteed Maximum Price, plus value of subsequent Contract Modifications, comprising total value for the entire Work at the site on a replacement cost basis with optional deductibles.

§ 11.2.2 Deleted.

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

§ 11.3 Waivers of Subrogation

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

(Paragraph deleted)

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

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

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused whether or not the Owner purchases and maintains such loss of use insurance.

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense, unless the condition was caused by the Owner or a Separate Contractor, in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of any applicable special warranty required by the

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Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work.

§ 12.2.6 Contractor shall assign to Owner, on a non-exclusive basis, any and all transferable manufacturer, supplier or Subcontractor warranties, and shall provide Owner with manufacturer, supplier and Subcontractor contact information for the enforcement of same.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

§ 13.3.1 Deleted.

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

§ 13.4 Tests and Inspections

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

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

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work,

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repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice and Contractor fails to commence and diligently pursue the cure of such default within ten (10) days, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the unpaid balance of the Guaranteed Maximum Price exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess, less 100% of any Savings, shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

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

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

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§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; including the cost of items fabricated off the Project site and cost of suitably stored materials, costs of demobilization and costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement or reasonable overhead and profit on the Work not executed if no such fee is stated in the Agreement, as well as any pending Claims due under the terms of the Contract.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Architect. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

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§ 15.1.6 Claims for Additional Time

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

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that adverse weather conditions exceeded the number of days stated in the Agreement or the effects thereof, including but not limited to precipitation, wind, hail, lightning, extreme temperatures, or standing water, create an unsafe condition or have an adverse effect on the scheduled construction, including but not limited to concrete pours, drywall installation, or application of required coatings, flooring or finishes, such conditions shall be documented by photographs, job log entries, or other substantiating data, and shall be considered an excused weather delay, and Contractor shall be entitled to an extension of the Contract Time for the period of delay. All weather delays will be day for day extension of time and will be determined by conditions at the project site, no monthly or area average(s) considered.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to:

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

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

§ 15.2 Initial Decision

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

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

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

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

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the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

§ 15.2.6 Either party may file for mediation of an initial decision at any time.

(Paragraph deleted)

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

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

§ 15.3 Mediation

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 30 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 30 days after mediation has been demanded without resolution of the dispute, file for binding dispute resolution.

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

Additions and Deletions Report for AIA® Document A201™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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

...

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Notwithstanding the foregoing, the Contractor is responsible for certain Mechanical, Electrical and Plumbing design build services as described in the A102 Agreement and its Exhibits (collectively referred to hereinafter as the "MEP Design") pursuant to design criteria established by the Architect in the Contract Documents. Such MEP Design shall be performed by registered design professionals retained by Contractor’s MEP subcontractors. **DELETE IF NO**

DESIGN BUILD MEP IN WORK SCOPE In the event of a conflict or ambiguity between the Contract Documents, the Contractor's Qualifications referred to in the Agreement shall control. In the event the geotechnical report is a Contract Document, the Drawings and Specifications setting forth the Work to be performed shall control over any conflicting recommendations contained in the geotechnical report.

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications (but excluding Drawings and Specifications, if any, prepared by or for Contractor or its Subcontractors pursuant to any Design-Build obligations Contractor may have under the Contract Documents), and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. Drawings and Specifications prepared as part of the MEP Design shall remain the property of the Contractor and/or MEP subcontractors. However, Contractor hereby grants and shall cause the MEP Design professionals and subcontractors to grant to Owner a royalty free, non-exclusive license to utilize the MEP Design Drawings and Specifications for the construction, operation, and maintenance of the Project. **DELETE IF NO MEP DESIGN/BUILD IN WORK SCOPE**

...

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if (i) delivered in person, (ii) three days following the post marked date if sent by mail, (iii) by courier, or (iv) by electronic or facsimile transmission if a method for electronic transmission is set forth in the Agreement. Agreement but electronic or facsimile transmissions sent after 5:00 p.m. recipient's time shall be deemed delivered the next day.

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

~~§ 1.8 Building Information Models Use and Reliance~~

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

~~§ 1.8 Deleted.~~

...

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Owner hereby represents and warrants to Contractor that Owner has absolute fee simple title in and to the property on which the Project is located

...

§ 2.2.1 Prior to commencement of the ~~Work and upon written request by the Contractor, the Work,~~ the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under ~~the Contract~~ the Contract, including but not limited to the information described in Texas Business and Commerce Code §56.054(d). The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the ~~Work and upon written request by the Contractor, the Work,~~ the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. ~~Contract, including but not limited to the information described in Texas Business and Commerce Code §56.054(d).~~ If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. ~~However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided.~~ If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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

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

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§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, air rights, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Owner shall secure and pay for "impact" or "front footage" permits and fees, all charges for bringing utility services to the site and other charges of a capital nature required by utility providers or governmental authorities. § 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

...

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, including benchmarks and horizontal and vertical control points, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable ~~promptness~~ promptness so as to not delay the Work. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents and design consultant Auto-CAD files (for preparation of shop drawings) for purposes of making reproductions pursuant to Section 1.5.2.

...

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

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§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the ~~Contractor~~ Contractor except that Contractor is entitled to rely upon the results of soils, concrete and welding tests.

...

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

DELETE HIGHLIGHTED TEXT IF NO MEP DESIGN BUILD

§ 3.2.3 The Contractor is ~~not-not,~~ except with respect to the MEP Design, required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, building codes, LEED requirements, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. **DELETE HIGHLIGHTED TEXT IF NO MEP DESIGN BUILD**

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. ~~If the Contractor performs those obligations, the Contractor shall not~~ The Contractor shall not, except with respect to the MEP Design, be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, building codes, LEED requirements, rules and regulations, and lawful orders of public ~~authorities~~ authorities unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect. **DELETE HIGHLIGHTED TEXT IF NO MEP DESIGN BUILD**

...

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or ~~procedures.~~procedures except as provided below. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or ~~procedures.~~procedures and shall not proceed with that portion of the Work without further written instructions from the Architect. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or ~~procedures.~~procedures. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage to the extent caused by those Owner-required means, methods, techniques, sequences or procedures.

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

...

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The foregoing warranties shall terminate one year after Substantial Completion of the Work except in the case of an applicable special warranty expressly required by the Contract Documents. OTHER THAN THE FOREGOING, THE CONTRACTOR MAKES NO OTHER WARRANTY, REPRESENTATION OR GUARANTEE, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND ANY AND ALL SUCH OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR SUITABILITY FOR INTENDED USE, ARE EXPRESSLY DISCLAIMED.

§ 3.5.2 All assignable material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be ~~transferable to the Owner,~~assigned to the Owner on a non-exclusive basis, and shall commence in accordance with Section 9.8.4.

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

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

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14-21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the ~~Contract Sum~~ Guaranteed Maximum Price or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. If the conditions encountered are materially different, the Guaranteed Maximum Price and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Guaranteed Maximum Price or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Article 15.

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

...

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

...

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable ~~promptness~~ promptness in sufficient time to avoid delay in the Work.

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§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The ~~superintendent~~ Contractor's Project Manager shall represent the

Contractor, and communications given to the ~~superintendent~~ Project Manager shall be as binding as if given to the Contractor.

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

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

...

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect ~~reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of ten (10) days to review submittals.~~

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

...

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed or registered design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

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

...

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall

not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, **except with respect to the MEP Design**, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect. **DELETE HIGHLIGHTED TEXT IF NO MEP DESIGN BUILD**

...

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

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§ 3.18.3 The obligations of the Contractor under this Section 3.18 shall not extend to the liability of the Architect, or the Architect's consultants, or the agents, servants or employees of any of them, arising out of: (i) defects in plans, designs, or specifications prepared, approved, or used by the Architect or its consultants; or (ii) negligence of the Architect or its consultants in the rendition or conduct of professional duties called for or arising out of the Contract Documents and the plans, designs, or specifications that are a part of the Contract Documents.

...

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

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§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or Separate Contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or operating performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect or, if requested by Owner, the Contractor will prepare Change Orders and the Architect will prepare Construction Change Directives, and the Architect may order minor changes in the Work as provided in

Section 7.4. The Architect will investigate and make initial determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

...

§ 4.2.11 The Architect will interpret and initially decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness.~~promptness so as to not delay the Work. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with the Section 4.2.11, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until five (5) days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

...

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness.~~promptness so as to not delay the Work but in no event more than five (5) days after the written request is made. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special ~~design.~~ Within 14 design and including any principal portion of the Work to be self-performed by Contractor to be administered as a lump sum subcontract. Within 7 days of receipt of the information, the Architect may shall notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the ~~14-day~~ 7-day period shall constitute notice of no reasonable objection.

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

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

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

...

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect.

Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right shall not to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract or with Separate Contractors without the Contractor's prior written consent. The terms of any such agreements with Separate Contractor(s) shall be substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation of subrogation, provided, however, notwithstanding the terms of any Separate Contractor agreement, including any terms similar to those of this Article 6 or other terms regarding coordination and scheduling of work, Contractor's Work and Contractor's schedule for the Work shall have priority over the construction schedule of any Separate Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. Contractor has no obligation to make available its cranes, hoists, or elevators or any other equipment to Owner's separate contractors. In the event Contractor allows any separate contractors of Owner to utilize Contractor's equipment, such separate contractor shall provide Contractor with such indemnities and additional insured coverage as may be required by Contractor. Furthermore, the Owner shall require its Separate Contractors to provide their own temporary facilities, waste removal, and pay for their utility consumption.

...

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

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

...

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Documents provided, however, if the Separate Contractors are to perform tenant finish work, they shall not be permitted to commence such work until Contractor has consented to such commencement.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent-known discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent-known discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed

construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent~~ discovered by Contractor.

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

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

...

- .2 The amount of the adjustment, if any, in the ~~Contract Sum~~; Guaranteed Maximum Price; and

...

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

...

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

...

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the ~~Architect~~; Owner or permitted under the Contract Documents or applicable law;

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§ 7.3.5 If the Contractor disagrees with the adjustment in the ~~Contract Time~~; Time or Guaranteed Maximum Price, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

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

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

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

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

...

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the ~~Contract Sum~~ Guaranteed Maximum Price or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes or it becomes apparent that the proposed minor change in the Work will affect the ~~Contract Sum~~ Guaranteed Maximum Price or Contract Time, the Contractor shall notify the Architect and shall not proceed or continue to implement the change in the Work. ~~If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.~~

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

...

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

...

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

lien waiver(s), certifications, or affidavits required from Contractor (i) are conditioned upon actual receipt of the funds in exchange for which it was given and (ii) will apply only to the extent of claims concerning the payment in exchange for which it was given, but not to other claims or potential claims.

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§ 9.3.2 ~~Unless otherwise provided in the Contract Documents, payments~~ Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. ~~If approved in advance by the Owner, payment may~~ Payment shall similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Owner shall also advance funds to Contractor to enable Contractor to pay deposits required for the release of fabrication and manufacturing of long lead items including but not limited to elevators.

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

...

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

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- .2 third party claims filed not covered by Contractor's insurance or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

...

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the ~~Contract~~ Sum; Guaranteed Maximum Price;
- .5 damage to the Owner or a ~~Separate Contractor;~~ Contractor not covered by Contractor's insurance;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover ~~actual or~~ liquidated damages for the anticipated delay; or

...

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

...

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which

the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

...

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from ~~all such direct~~ loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, ~~fees~~, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier, ~~out of the amount paid to the Contractor on account of such Subcontractor's or supplier's portion of the Work.~~ Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted. Upon notification by Contractor of payment of such notice of lien claim or other claim for payment or the filing of an appropriate surety bond for the property, payment withheld due to such lien or claim will be made or released to Contractor for amounts previously withheld due to such claims.

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

...

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

...

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate written agreement with the Contractor, provided such occupancy or use is consented to by the Contractor in writing and the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not

be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise ~~satisfied~~, satisfied or will be paid or otherwise settled from the proceeds of the final payment, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of ~~obligations~~, obligations for Work for which Contractor has received payment from Owner, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be ~~designated by the Owner~~, required by Section 9.3.1 above. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such a recorded lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

...

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

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

...

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

...

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

...

§ 10.3.1 ~~The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents that was not brought to the Project site by Contractor or its Subcontractors and if~~

reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from such a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

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

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

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§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. Notwithstanding the foregoing or Exhibit A, Contractor's Commercial General Liability coverage shall have limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, ~~Architect, and Architect's consultants~~ shall be named as additional insureds under the Contractor's commercial general liability policy ~~or as otherwise described in the Contract Documents as described in Exhibit A to the Agreement.~~

§ 11.1.2 ~~The Contractor~~ Contractor, if required by Exhibit A, shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. The Owner shall pay for the cost of such bonds. The Guaranteed Maximum Price shall be increased by Change Order for the cost of such bonds unless the cost of such bonds has been included in a Contractor's "GMP Estimate" attached as an exhibit to the Agreement.

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§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Notwithstanding the foregoing or Exhibit A, Contractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Guaranteed Maximum Price, plus value of subsequent Contract Modifications, comprising total value for the entire Work at the site on a replacement cost basis with optional deductibles.

§ 11.2.2 Failure to Purchase Required Property Insurance. ~~If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the~~

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

...

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

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

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

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however ~~caused~~. caused whether or not the Owner purchases and maintains such loss of use insurance.

~~§11.5 Adjustment and Settlement of Insured Loss~~

§ 11.5 Adjustment and Settlement of Insured Loss

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

§ 11.5.2 Prior to settlement of an insured loss, the ~~Owner~~ Contractor shall notify the ~~Contractor~~ Owner of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The ~~Contractor~~ Owner shall have

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

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§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's ~~expense.~~ expense, unless the condition was caused by the Owner or a Separate Contractor, in which event the Owner shall be responsible for payment of such costs.

...

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

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

§ 12.2.6 Contractor shall assign to Owner, on a non-exclusive basis, any and all transferable manufacturer, supplier or Subcontractor warranties, and shall provide Owner with manufacturer, supplier and Subcontractor contact information for the enforcement of same.

...

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

...

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

~~Deleted.~~

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

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

...

- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or ~~suppliers;~~ Suppliers;

...

§ 14.2.2 When any of the reasons described in ~~Section 14.2.1~~ Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' ~~notice,~~ notice and Contractor fails to commence and diligently pursue the cure of such default within ten (10) days, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

§ 14.2.4 If the unpaid balance of the ~~Contract Sum~~ Guaranteed Maximum Price exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such ~~excess~~ excess, less 100% of any Savings, shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

...

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

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; including the cost of items fabricated off the Project site and cost of suitably stored materials, costs of demobilization and costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth ~~in the Agreement.~~ in the Agreement or reasonable overhead and profit on the Work not executed if no such fee is stated in the Agreement, as well as any pending Claims due under the terms of the Contract.

...

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

...

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

...

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

...

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

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§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that ~~weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had adverse weather conditions exceeded the number of days stated in the Agreement or the effects thereof, including but not limited to precipitation, wind, hail, lightning, extreme temperatures, or standing water,~~ create an unsafe condition or have an adverse effect on the scheduled construction-construction, including but not limited to concrete pours, drywall installation, or application of required coatings, flooring or finishes, such conditions shall be documented by photographs, job log entries, or other substantiating data, and shall be considered an excused weather delay, and Contractor shall be entitled to an extension of the Contract Time for the period of delay. All weather delays will be day for day extension of time and will be determined by conditions at the project site, no monthly or area average(s) considered.

...

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver ~~includes~~ includes, but is not limited to:

...

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

and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

...

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of ~~60-30~~ days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

...

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Matthew E. Lutz, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:43:52 ET on 02/10/2020 under Order No. 9724604502 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Agenda Item: 4.9**AGENDA MEMORANDUM**

Meeting Date: February 24, 2020

Agenda Item: Consideration, discussion and possible action to approve Resolution R-2020-10 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to promote “Film Bastrop” at the 2020 SXSW event.

Prepared by: BEDC Staff

This is an opportunity to partner with SXSW to launch our “Film Bastrop” initiative. The sponsorship will allow the BEDC to set up TV screens around the venue as well as provide an opportunity for Zachary Levi to talk about “why film in Bastrop.”

It gives us the opportunity to brand ourselves and engage directly with members of the Texas media scene, helping the BEDC to achieve branding Bastrop as a location for film “Bastroportunities.” Film and creative services was a recommended target industry in the BEDC 2020 Strategic Plan completed by Garner Economics.

Attachments:
Draft Resolution

Recommendation – Approve the Resolution as presented.

[RECOMMENDED MOTION] – I move to approve Resolution R-2020-10.



A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO PROMOTE “FILM BASTROP” AT THE 2020 SXSW EVENT.

WHEREAS, the Bastrop Economic Development Corporation (“BEDC”) is a public instrumentality and non-profit industrial development corporation duly established and operating under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, known as the Development Corporation Act of 1979 (the “Act”); and

WHEREAS, to fulfill its public purpose in attracting qualifying projects under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, the BEDC supports certain events that are found to promote the City of Bastrop’s economic opportunities; and

WHEREAS, the BEDC has found that the funds to be expended for promotional purposes under this resolution will not exceed ten percent (10%) of the BEDC’s revenues, as required by Texas Local Government Code § 505.103; and

WHEREAS, the film industry is one of the target industries recommended by Garner Economics in the BEDC 2020 Strategic Plan; and

WHEREAS, after careful evaluation and consideration by the Board, it has determined that the event to be sponsored will promote or develop new or expanded business enterprises by showcasing the “Film Bastrop” initiative at the 2020 SXSW event; and

WHEREAS, the BEDC Board hereby approves sponsoring the 2020 SXSW event for “Film Bastrop”, in an amount not to exceed \$10,000.00, to be executed by the Chief Executive Officer on behalf of the BEDC.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BASTROP ECONOMIC DEVELOPMENT CORPORATION THAT:

SECTION 1. The Board hereby finds that all of the recitals above are true and correct and are incorporated herein as if restated in full.

SECTION 2. The Board hereby finds that the funds used in the promotion of “Film Bastrop” shall be considered a “promotional expense” under § 505.103 under Texas Local Government Code, Chapters 501 and 505, *et seq.*, as amended, and hereby authorizes the Chief Executive Officer to execute all necessary documentation.

SECTION 3. This Resolution is effective upon passage.

PASSED AND APPROVED on the _____ day of _____, 20____, by the Board of Directors of the Bastrop Economic Development Corporation.

[SIGNATURE PAGE FOLLOWS]

BASTROP ECONOMIC
DEVELOPMENT CORPORATION

Kathryn Nash, Board Chair

ATTEST:

Sam Kier, Board Secretary

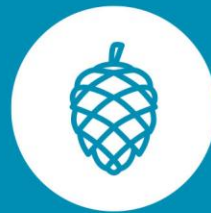
APPROVED AS TO FORM:

Denton, Navarro, Rocha, Bernal & Zech, P.C.
Board Counsel

DRAFT

The Bastrop Economic Development Corporation welcomes you to the next frontier of development for Central Texas.

bastrop
EDC



Today's Agenda

1. Call to Order
2. Photos of BEDC Board Members
3. Public Comments
4. Regular Business & Presentations
5. Executive Session
6. Adjournment

2. Photos of BEDC Board Members



3. Public Comments



4. Regular Business & Presentations



4.1 Regular Business & Presentations

Approval of meeting minutes from the Bastrop EDC Regular Board Meeting of December 16, 2019, Joint Meeting with City Council of January 15, 2020, and Board Meeting and Retreat of January 27, 2020.

4.2 Regular Business & Presentations

Acceptance of the Bastrop EDC's financial summary reports for periods ending November 30, 2019, December 31, 2019, and January 31, 2020.

4.2 Regular Business & Presentations - Financials

BEDC Financial Summary Reports January 31, 2020.



Summary of Revenues and Expenditures – 01/31/2020

Month	FY 2020 Revenue	FY 2020 Expense	Monthly Variance
October	\$ 227,085	\$ 128,658	\$ 98,427
November	\$ 198,030	\$ 109,017	\$ 89,013
December	\$ 226,226	\$ 274,798	\$ (48,572)
January	\$ 226,086	\$ 175,434	\$ 50,652
February			
March			
April			
May			
June			
July			
August			
September			
Total	\$ 877,427	\$ 687,907	\$ 189,520



Summary of Sales Tax Revenue – 01/31/2020

Month	FY 2020 Forecast	FY 2020 Actual	Monthly Variance
October	\$ 178,902	\$ 217,223	\$ 38,321
November	\$ 201,052	\$ 189,029	\$ (12,023)
December	\$ 190,167	\$ 217,161	\$ 26,994
January	\$ 204,421	\$ 217,121	\$ 12,700
February	\$ 255,525		
March	\$ 178,867		
April	\$ 191,645		
May	\$ 262,161		
June	\$ 217,197		
July	\$ 228,184		
August	\$ 229,973		
September	\$ 221,906		
Total	\$ 2,560,000	\$ 840,534	\$ 65,992

8.5% increase



Expenditures Budget to Actual – 01/31/2020

OPERATING EXPENDITURES COMPARISON			
Category	FY 2020 Forecast	FY 2020 Actual	Monthly Variance
Personnel	\$ 154,391	\$ 132,776	\$ 21,615
Supplies & Materials	\$ 10,720	\$ 1,570	\$ 9,150
Maintenance & Repairs	\$ 8,840	\$ 1,527	\$ 7,313
Occupancy	\$ 18,000	\$ 16,954	\$ 1,046
Contractual Services	\$ 126,856	\$ 85,758	\$ 41,098
Marketing/Advertising	\$ 265,103	\$ 231,812	\$ 33,291
Contingency	\$ -	\$ -	
Debt Service	\$ -	\$ -	
Total	\$ 583,910	\$ 470,397	\$ 113,513

Forecast to actual = 19.44%.

Forecast to actual comparison is a positive 19% year-to-date.



Expenditures Budget to Actual – 01/31/2020

CAPITAL OUTLAY PROJECTS			
Category	FY 2020 Budget	FY 2020 Actual	Budget Balance
Trail System Downtown Loop	\$ 140,000	\$ 18,000	\$ 122,000
(Only engineering and permitting expenses so far)			
Technology/MLK Extension	\$ 1,132,000	\$ 5,800	\$ 1,126,200
(Only engineering expenses so far)			
921 Main Street Project	\$ 1,420,000	\$ 140,719	\$ 1,279,281
(Engineering and Constuction)			
Total	\$ 2,692,000	\$ 164,519	\$ 2,527,481

These projects are funded by various funds including 2013 bond funds, operating funds, and 2018 bond funds. The 921 Main Street Project was funded through a loan.



Bastrop Economic Development Corporation Fund

FY 2019-2020 Budget

Working Capital 9-30-2019	\$	5,109,097
 FY 2019-2020		
Budgeted Revenues	\$	4,213,800
Total FY 2019 Resources	\$	9,322,897
 Budgeted Expenditures:		
Operating Expenses	\$	(2,066,446)
Capital Expenses	\$	(2,692,000)
Debt Service	\$	(485,453)
	\$	(5,243,899)
 Projected Working Capital Balance 09-30-2020	 \$	 4,078,998
 Reserve 25% of Operating Expense	 \$	 516,612



4.3 Regular Business & Presentations

Update on 921 Main Street Building from
Project Manager Jimmy Crouch.

Bastrop Economic Development Corporation

921 Main St.
Monthly Report for
February 2020

2/21/2020



Owner Top 3 Priorities

1. **Communication** – There will need to be daily conversation and weekly updates from the new general contractor.
2. **Schedule** – The overall schedule will need to be reviewed when Sabre Construction submits their original construction schedule.
3. **Budget** – The budget has been impacted due to the change in General Contractors. The final accounting from Stone Development is still being evaluated.

Permit Status

1. Site Development Permit
 - Site Development permit was conditionally approved on 11-22-2019.
 - GC sent in comments for final approval on 12-05-2019.
2. Demolition Permit
 - Demolition permit was issued by CoB on 12-05-2019.
3. Building Permit (Shell)
 - Building permit (Rev 02) drawing package was submitted on 12-09-2019. There was a resubmittal of the drawings on 02-20-2020.
4. Building Permit (TI)
 - Building Permit (TI) package has been submitted on 02-20-2020.

Design Status

Design Update:

- The design that was previously contracted with Stone Development has been terminated and the remaining design services contracted directly between BEDC and PLACE Architects.
- The Civil, Structural, Mechanical, Electrical and Plumbing Designs will all fall under PLACE Architects contract. PLACE will perform all design coordination for the remainder of the project.
- All designs are completed and have been submitted to the City of Bastrop including the Tenant Improvements (TI)

Budget

Original budget: \$1,800,000.00

Sabre Construction GMP contract - TBD

Procurement

Long Lead items

- Joist and Decking has been ordered.
- Elevator has been ordered.
- Structural Steel - TBD
- Electrical Switchgear - TBD
- Light fixtures - TBD
- Storefront - TBD
- Interior Doors and frames - TBD

Schedule

Revised construction schedule will be issued by Sabre Construction as soon as possible.

Construction Activities

Division 01 – General Requirements

- Mobilization by Sabre Construction TBD

Division 02 – Site Construction

- Demolition of the existing shed and brick wall was completed in January 2020.

Division 16 – Electrical

- Installation of the temporary electrical pole has been completed.

Submittals

- Critical submittals
 - Structural Steel – Approved
 - Elevator - Approved

Project Photos











Upcoming Highlights

- Mobilization
- Installation of underground utilities.

4.4 Regular Business & Presentations

Consideration, discussion and possible action to approve Resolution R-2020-05 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into an industry partnership with Opportunity Austin.

4.5 Regular Business & Presentations

Consideration, discussion and possible action to approve Resolution R-2020-06 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into an amended contract with Place Designers, Inc.

4.6 Regular Business & Presentations

Consideration, discussion and possible action to approve Resolution R-2020-07 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into a contract with Capital Geotechnical Services PLLC for geotechnical services for the 921 Main Street Project.

4.7 Regular Business & Presentations

Consideration, discussion and possible action to approve Resolution R-2020-08 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer and the City of Bastrop Finance Director to make decisions regarding the movement of reserve funds located in certificates of deposit and money market accounts.

4.8 Regular Business & Presentations

Consideration, discussion and possible action to approve Resolution R-2020-09 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to enter into an AIA construction contract with Sabre Commercial for general contractor services for the 921 Main St. Project with a guaranteed maximum price to be determined.

4.9 Regular Business & Presentations

Consideration, discussion and possible action to approve Resolution R-2020-10 of the Bastrop Economic Development Corporation authorizing the Chief Executive Officer to promote “Film Bastrop” at the 2020 SXSW event.

4.10 Regular Business & Presentations

Activity Report

Events Attended

- Cameron presented at the January 8th Bastrop Chamber of Commerce Luncheon
- Cameron and Jean attended the International Council of Shopping Centers (ICSC) Red River States Conference & Deal Making in Fort Worth January 8th – 10th
- Staff attended the Ascension Seton Grand Opening on January 23rd
- The BEDC hosted the January B.E.S.T. Breakfast on January 31st
- Jean attended the Medical Design & Manufacturing (MD&M) West conference February 11th – 13th in Anaheim, CA
- Cameron attended the groundbreaking event for the Main Street Rehabilitation Project on February 14th
- Cameron and Jean attended the Texas Economic Development Council (TEDC) Winter Conference February 19th – 21st. The BEDC received an award for *Economic Development Excellence* for 2019.



Project Updates

- 921 Main: Progress report provided by project manager.
- Downtown Trail: TxDOT as approved the project and we're moving forward with construction.
- Technology Drive: Project is in final permitting phase.



5. Executive Session



5.1 Executive Session

The Bastrop EDC Board of Directors will meet in a closed/ executive session pursuant to the Texas Government Code, Chapter 551, to discuss the following:

Section 551.071 Consultation with Attorney and **Sections 551.072 & 551.087** Deliberation regarding the commercial or financial information, as well as the purchase, exchange, lease, or value of real property received on 921 Main Street Project – to include Project Paint by Number, 921 Main Street Project, Stone Development Group, and Sabre Commercial

Section 551.071 Consultation with Attorney and **Sections 551.072 & 551.087** Deliberation regarding the commercial or financial information, as well as the purchase, exchange, lease, or value of real property received on potential projects – Project Charlotte, Project Bob Pole, Project Greenport, and Project Westworld

Section 551.071 Consultation with Attorney and **Section 551.074** Discussion and deliberation with Chief Executive Officer regarding Policies and Procedures and Personnel Matters

5.2 Executive Session

The Bastrop EDC Board of Directors will reconvene into open session to discuss, consider and/or take any action necessary related to the executive session items noted herein.

6. Adjourn

Next Regular Board Meeting: March 23, 2020

