DESIGN-BUILD AGREEMENT

This DESIGN-BUILD AGREEMENT is made as of the 23rd day of January, 2024 (the "Effective Date") between

County of Bexar, a political subdivision of the State of Texas (the "County")
Paul Elizondo Tower
101 W. Nueva
San Antonio, Texas 78205

and

Joeris General Contractors, LLC (the "Design-Builder")
823 Arion Parkway
San Antonio, Texas 78216

as provided for in Section 2269.303, Texas Government Code.

This Design-Build Agreement is being entered into in connection with the following building construction project (the "Project"):

Bexar County Dual Diagnosis Residential Facility (DDRF) Recovery Center Intake Building and Campus Renovations Project to be located at 10975 Applewhite Rd., San Antonio, Texas 78224

All capitalized words and phrases contained in the Design-Build Contract (as that particular term is defined in Section 1.1 of this Agreement) shall have the meaning given such word or phrase in Article A.1 of Exhibit A (entitled "Terms and Conditions") to this Agreement.

County has received funds from the United States Department of the Treasury (the "Treasury") pursuant to the Coronavirus State and Local Fiscal Recovery Fund ("ARPA Funds") under Section 602 and 603 of Title VI the Social Security Act, as amended by Section 9901 of the American Rescue Plan Act of 2021 ("ARPA") (Subtitle M of Title IX of Public Law 117-2). The Design-Build Contract (as that term is defined in Exhibit "A" attached hereto) includes regulatory provisions and clauses as required under 2 C.F.R. 200 and other federal regulations associated with federal funding being provided under this Design-Build Contract.
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G  BEXAR COUNTY’S AMERICAN RESCUE PLAN ACT (ARPA) CONTRACT ADDENDUM
The County and Design-Builder agree as follows:

ARTICLE 1  DESIGN-BUILD DOCUMENTS

§1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents ("Design-Build Documents") consist of all of the following:

§1.1.1 this Design-Build Agreement between County and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits;

§1.1.2 the Terms & Conditions (i.e., Exhibit A hereto), Supplementary Conditions (i.e., Exhibit C hereto), General Conditions (i.e., Exhibit D hereto), County's Requirement for Criminal Background Checks (i.e., Exhibit E hereto), Stipulated Sum (i.e., Exhibit F hereto), and Bexar County's American Rescue Plan Act (ARPA) Contract Addendum (i.e., Exhibit G hereto);

§1.1.3 Drawings and Specifications produced by Design-Builder's Architect of Record (which will reflect the design intent of the Bridging Documents stipulated in the RFQ and RFP) and accepted by the Owner;

§1.1.4 the Design-Builder's Statement of Qualifications and proposal to the RFQ/P, proposal to the RFP, and written modifications and/or additions to either the Qualifications and proposals which were accepted by County, if any (collectively, the "Proposals");

§1.1.5 the RFQ, the RFP, and all Addenda thereto;

§1.1.6 other documents listed in this Agreement; and

§1.1.7 Modifications issued after execution of this Agreement in accordance with the terms of this Agreement.

The Design-Build Documents shall not be construed to create a contractual relationship of any kind: (i) between the Architect and County; (ii) between County and a Contractor or Subcontractor; or (iii) between any persons or entities other than County and Design-Builder including, without limitation, any Consultant retained by County to prepare or review the Project Criteria.

§1.2 The Design-Build Contract represents the entire and integrated agreement between the Parties, and supersedes prior negotiations, representations, or agreements, either written or oral, concerning the subject matter addressed therein.

§1.3 The Design-Build Contract may be amended only by a Modification.

ARTICLE 2  THE WORK OF THE DESIGN-BUILD CONTRACT

§2.1 Design-Builder shall fully execute the Work described in the Design-Build Documents and all work incidental or reasonably inferable that is necessary to produce the results intended by the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3  DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§3.1 The written Notice to Proceed shall be issued by County no more than ten (10) calendar days after the date of the Agreement and receipt of all applicable permits necessary to commence the Work, with the Date of Commencement of the Work being no less than five (5) calendar days following receipt by Design-Builder of the Notice to Proceed.
§3.2  The Contract Time is subject to adjustments as provided in the Design-Build Documents.

The Parties agree that “time is of the essence” with regard to achieving Substantial Completion. Design-Build acknowledges and recognizes that: (a) County is entitled to full and beneficial occupancy and use of the completed Work on or before the expiration of the number of days set out for Substantial Completion in Section 3.3, below, as the Contract Time may be adjusted under the Design-Build Documents; and (b) County has, or will, enter into lease agreements with termination dates based upon Design-Build achieving Substantial Completion within such time. Design-Build further acknowledges and agrees that if Design-Build fails to complete substantially, or cause the Substantial Completion of any portion of the Work within the Contract Time, County shall sustain extensive damages and serious loss due to such failure. The exact number of such damages will be extremely difficult to ascertain. Therefore, County and Design-Build agree as follows in this Section 3.2 for damages caused by delay.

Design-Build shall pay County as delay liquidated damages, and not as a penalty, and as County’s sole remedy for any such delay, the sum of ONE THOUSAND AND NO/100 DOLLARS (US$1,000.00) per day for each day of delay in achieving Substantial Completion of the Work (“Delay Liquidated Damages”), commencing on the first day following the expiration of the number of days set out for Substantial Completion in Section 3.3, subject to the adjustment of Contract Time as provided in the Design-Build Documents.

§3.3  Design-Build shall achieve: (a) Substantial Completion of the Work not later than five hundred forty (540) calendar days from the Date of Commencement; and (b) Final Completion of the Work not later than sixty (60) calendar days from the date of Substantial Completion.

ARTICLE 4  STIPULATED SUM

§4.1  County shall pay Design-Build the Stipulated Sum in current funds for Design-Build’s performance of the Design-Build Contract.

§4.2  Stipulated Sum.

§4.2.1  The Stipulated Sum payable by County to Design-Build shall be in the amount of TWENTY MILLION SEVEN HUNDRED NINETY-FOUR THOUSAND DOLLARS AND No/100 DOLLARS (US $20,794,000.00), subject to additions and deductions as provided in the Design-Build Documents.

The costing methodology and format has been agreed upon by County and Design-Build in connection with the Design-Build’s Proposal.

§4.2.2  Included within the Stipulated Sum shall be ONE MILLION SIX HUNDRED TWENTY FIVE THOUSAND FIVE HUNDRED THIRTY-SIX DOLLARS AND No/100 DOLLARS (US$1,625,536.00), that has been negotiated with the Design-Build for professional Design Services that will be required for the Project.

§4.2.3  This Stipulated Sum is the maximum amount that will be paid to Design-Build and includes all Design Services fees, all Costs of the Work (including allowances, alternatives, unit prices and construction contingencies), all General Conditions Costs, and the Construction Phase Fee,
as provided for in Exhibit F attached hereto.

§4.2.4 Subject to any Change Order or Interim Change Authorization (a) entered into in accordance with the terms of the Design-Build Contract, and (b) which causes either the known or estimated cost of the Project to exceed the Stipulated Sum (as such may be modified under the terms of this Agreement), under no circumstances shall the initial Stipulated Sum ever exceed the fixed, lump sum amount of TWENTY MILLION SEVEN HUNDRED NINETY-FOUR THOUSAND DOLLARS AND No/100 DOLLARS (US$20,794,000.00).

§4.2.5 Allowances, if any, are as follows:

NONE

ARTICLE 5 PAYMENTS

§ 5.1 Schedule of Values. Within twenty (20) days of receiving the County’s Notice to Proceed, the Design-Build shall submit to County, for review and approval, a Schedule of Values, accurately itemizing material and labor for the various classifications of the Work. The approved Schedule of Values will be used as the basis for the progress payments under the Design-Build Documents. The Schedule of Values shall be in such detail as may be required by County. The detailed breakdown within the Schedule of Values shall follow the trade divisions of the Specifications, along with provision for the General Conditions’ costs, fees, contingencies, and allowances so that the sum of the items will equal the Stipulated Sum. Each item shall be assigned labor or material values, or both, the subtotal thereof equaling the value of the work (including Work) in place when completed. The allocation of the Stipulated Sum throughout the Schedule of Values shall not constitute a guarantee of the cost of the Work of each individual line item in the schedule of values, but shall only be used as a reference in processing payments.

§ 5.2 Progress Payments - Generally.

§5.2.1 If requested in writing by County, the Schedule of Values shall be supported by such data to substantiate its accuracy as County may reasonably require. Based upon applications for payment (sometimes herein referred to as “Pay Applications”) submitted to County by the Design-Build, County shall make progress payments on account of the Stipulated Sum to the Design-Build in accordance with the provisions of Section 2251.021, Texas Government Code (for purposes of subsection 2251.021(a)(2), Texas Government Code, the date that the performance of services is deemed completed is the date when County receives a correct and complete Pay Application). The County shall pay the Pay Applications before they become overdue pursuant to the Texas Government Code Section 2251.021. A corporate officer or a duly authorized representative of the Design-Build must sign each Pay Application. Upon County’s request, current, accurate, and complete reports of the status of Subcontractors’ accounts shall be furnished in a form acceptable to County.

§5.2.2 Periodic progress payments will be made to the Design-Build for Work performed and materials in place or suitably stored and protected on the Project Site, or as otherwise agreed to by County and Design-Build. Payment shall not become due until receipt by County of a correct and complete Pay Application, certified by the Project Architect. Upon receipt by County of a correct and complete Pay Application, certified by the Project Architect, County will make payment to Design-Build in accordance with the provisions of Section 2251.021, Texas Government Code. Progress payments are made provisionally and do not constitute acceptance of Work not performed or completed in accordance with the Design-Build Documents. Progress payments for Change
Order Work will not be accepted for payment until a Change Order has been fully signed and executed and the Work has been performed in accordance with the applicable Design-Build Documents.

Payments due and unpaid under the Design-Build Contract shall bear interest from the date payment is due. Interest owed by County to Design-Builder shall be paid in accordance with the Chapter 2251, Subchapter B, Texas Government Code. Interest owed by Design-Builder to County shall be at the rate set established in subsection 2251.025(b), Texas Government Code.

§5.2.3 Title to all material and Work covered by progress payments transfers to County upon payment for such material and Work. Transfer of title to County does not relieve the Design-Builder of the sole responsibility for the care and protection of materials and Work upon which payments have been made, or the restoration of any damaged Work, or waive the right of County to require the fulfillment of all the terms of the Design-Build Documents.

§5.2.4 Progress payments to the Design-Builder shall not release the Design-Builder or its surety from any obligations under the Design-Build Documents.

§ 5.3 Progress Payments — Stipulated Sum.

§5.3.1 Pay Applications where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Pay Application.

§5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

a. That portion of the Stipulated Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Stipulated Sum allocated to that portion of the Work in the Schedule of Values, less retainerage on the Work as set out in Section 5.6, below, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to County of Changes in the Work, amounts not in dispute shall be included as provided in Supplementary Conditions, Section 11.11;

b. Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the completed construction (or, if approved in advance by County, suitably stored off the Project Site at a location agreed upon in writing), as set out in Section 5.5.1, below;

c. Subtract the aggregate of previous payments made by County under the Design-Build Contract; and

d. Subtract amounts, if any, for which County has withheld payment from, or nullified, a Pay Application as provided in Section 5.7, below.

§5.3.3 The progress payment amount determined in accordance with Section 5.3.2, above, shall be further modified under the following circumstances:

a. Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Stipulated Sum, less one hundred fifty percent
(150%) of the amounts that County shall determine for incomplete Work, unsettled claims, and the retainage applicable to such items; and

b. Add, if Final Completion of the Work is thereafter materially delayed through no fault of Design-Builder, any additional amounts payable in accordance with Section 5.15.9, below.

§ 5.4 Design-Builder’s Periodic Invoice. No later than seven (7) days after receipt of a Pay Application, County will meet with Design-Builder to observe the condition of the Work. On the basis of this review, County may require modifications to the Pay Application prior to the submittal of the final version, and shall promptly notify the Design-Builder, in writing, of any revisions that are necessary for approval. As soon as practicable, but in no event later than seven (7) days following the aforementioned Pay Application review meeting, the Design-Builder shall submit to County the final version reflecting the required modifications, attaching all additional documentation required by County, and providing an affidavit swearing or affirming that all payrolls, bills for labor, materials, equipment, subcontracted work, or other indebtedness connected with the applicable Pay Application have been paid or will be paid within the time specified by applicable Texas law. No Pay Application shall be complete unless it fully reflects all required modifications and attaches all required documentation including the Design-Builder’s affidavit, including certified payrolls in accordance with the General Conditions, Section 2.3.

§5.4.1 In taking action on any Pay Application submitted pursuant to the Agreement, County shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit, or arithmetic verification of the documentation submitted or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of this Agreement. Such examinations, audits, and verifications, if required by County, will be performed by County’s accountants acting in the sole interest of County.

§ 5.5 County’s Duty to Pay. County shall have no duty to pay the Design-Builder in connection with any Work or materials delivered except on receipt by County of a complete and certified Pay Application.

§5.5.1 County must approve stored materials and that appropriate storage for such materials has been provided before paying for them. Payment for stored materials shall be limited to ninety-five per cent (95%) of the scheduled value for the materials.

§ 5.6 Retainage. County shall withhold from each progress payment, as retainage, the maximum amount permitted under Section 2252.032(b), Texas Government Code, excluding Design Services. No retainage will be held on Design Services. Retainage so withheld shall be managed in conformance with Subchapter B, Chapter 2252, Texas Government Code.

§5.6.1 Any request for reduction or release of retainage shall be accompanied by written consent of the Design-Builder’s Surety. Any such reduction or release (whether full or partial, as applicable) will be subject to applicable provisions of subsections 2252.032 (f), (g), and (h), Texas Government Code.

§5.6.2 At the time of the execution of this Agreement, the Parties anticipate only one release of all retainage upon Final Completion of the Project. Partial releases/reduction of retainage shall not be permitted without a written amendment to the Agreement setting forth clearly identifiable Work phases or Work tasks and containing such other information as required by the Bexar County Auditor’s Office. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of:
a. any of County’s rights to retainage in connection with other payments to the Design-Builder; or

b. any other right or remedy that County has under the Design-Build Documents, at law or in equity.

§ 5.7 Reduction to Cover Loss. County may, upon written notice to Design-Builder, reduce the amount requested under any Pay Application prior to payment to the extent necessary to protect County from loss on account of actions of the Design-Builder as a result of:

§5.7.1 Defective Work not remedied in a timely and workmanlike manner.

§5.7.2 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time.

§5.7.3 Failure to comply with the requirements of Prevailing Wage Rate Law and/or assessment of fines for any violation of the applicable Prevailing Wage Rate laws.

§5.7.4 For that portion of the Work for which a payment bond is not required under subsection 2269.311, Texas Government Code, receipt of written notice by County of bills unpaid by the Design-Builder to Contractor(s) and/or Subcontractors, material Suppliers, etc. that are not a result of County’s failure to pay amounts due and owing under the Design-Build Documents. Any funds so withheld shall be released to Design-Builder if and promptly after Design-Builder furnishes either (a) a bond for release of lien under Subchapter H, Chapter 53, Texas Property Code, or (b) a release of lien.

§5.7.5 Persistent failure to carry out the Work in accordance with the Design-Build Documents.

§5.7.6 Reasonable evidence that the Work cannot be completed for the remainder of the Stipulated Sum.

§5.7.7 Failure to comply with the terms and conditions of the Design-Build Documents.

§ 5.8 Off-Site Storage. With prior written approval by County and in the event Design-Builder elects to store materials at an off-site location, Design-Builder shall abide by the following conditions:

§5.8.1 Inspection of such off-site location and the materials stored thereon by County’s Designated Representative is allowed at any time during Design Builder’s normal business hours. County’s representatives must be satisfied with the security, control, maintenance, and preservation measures for such site.

§5.8.2 Materials for the Project are physically separated and marked for the Project in a sectioned-off area. Only materials that have been approved through the submittal process are to be stored in that area.

§5.8.3 County reserves the right to reject materials at any time prior to final acceptance of the Project if they do not meet the applicable contract requirements, regardless of any previous progress payments made.

§5.8.4 With each monthly Pay Application, Design-Builder shall submit a report to County listing the quantities of materials already paid for but still stored in an off-site location.
§5.8.5 All warehouse records, receipts and invoices associated with the Project shall be made available to County’s representatives, upon request, to verify the quantities and their disposition for a period of at least three (3) years after Final Completion.

§5.8.6 In the event of termination of this Agreement due to any default by Design-Builder, the items held in storage off-site, upon which payment has been made (and, notwithstanding anything in the Design-Build Documents to the contrary, County shall pay Design Builder in full for such materials prior to delivery), will be promptly turned over to County at a location directed by County at Design-Builder’s risk of loss and expense. In the event of County’s termination of this Agreement for convenience, County will pay Design-Builder any amounts not previously paid by County for such items in storage, plus the cost of delivery of such items to the location directed by County.

§5.8.7 The full provisions of ALL RISK, BUILDER’S RISK INSURANCE shall cover the materials off-site and in transit to and from the off-site location in every respect as though they were stored on the Project Site.

§ 5.9 Owner’s Contingency.

§5.9.1 The Owner is carrying an Owner’s contingency amount to be used to fund increases in the direct construction cost of the Project (the “Owner’s Contingency”).

§5.9.2 The Owner’s Contingency is specifically not to be used for any Contractor re-work of defective Work or to correct any error or omission in the Construction Documents if such re-work, error, or omission was caused by either: (a) the negligence, or (b) failure to fulfill a specific responsibility to County set forth in this Agreement, of the Design-Builder or the Design-Builder’s foremen, engineers, or superintendents, or other supervisory, administrative, or managerial personnel, or the failure of the Design-Builder’s personnel to supervise adequately the Work of the Subcontractors or Suppliers, and may only be utilized to the extent that the cost of the applicable repair or correction was not recoverable by the Design-Builder from Design-Builder’s insurance or posted bond, or any surety, any Subcontractor, the Project Architect, or any Supplier. Design-Builder shall promptly provide County with written documentation of the scope of work affected, the basis for any increases in costs which result from an expenditure of Owner’s Contingency, and, as applicable, evidence that Design-Builder was unable to recover the costs from any insurance or posted bond, or a surety, Subcontractor, the Project Architect, or any of the Suppliers, as applicable, prior to spending any of its contingency. The documentation for expenditures from the Owner’s Contingency should be submitted with the next scheduled Pay Application.

§5.9.3 Any balance in the Owner’s Contingency fund remaining at the end of the Project shall be promptly returned to County as savings.

§ 5.10 Payment of Project Architect and Design Professionals. Design-Builder shall promptly pay the Project Architect, each design professional, and other consultants retained directly by Design-Builder, upon receipt of payment from County, out of the amount paid to Design-Builder on account of each such party’s respective portion of the Work, the amount to which each such party is entitled.
§ 5.11 Payment of Subcontractors.

§5.11.1 Design-Builder shall promptly pay each Subcontractor, upon receipt of payment from County, out of the amount paid to Design-Builder on account of such Subcontractor’s portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to Design-Builder on account of the Subcontractor’s portion of the Work. Payment to material Suppliers shall be treated in a similar manner. Design-Builder shall, by appropriate written agreement with each Subcontractor, require each Subcontractor to make payments to its own subcontractors in a similar manner. Upon County’s written request, Design-Builder shall promptly provide County with a complete and accurate copy of any such written agreement between Design-Builder and any Subcontractor. County shall have no obligation to pay, or to see to the payment of, money to a Subcontractor, except as may otherwise be required by applicable Texas law.

§ 5.12 Failure of Payment.

§5.12.1 If, for reasons other than those enumerated in Section 5.7, above, County does not issue a payment as required before it becomes overdue under Section 5.2.2, above, then Design-Builder may, upon seven (7) additional days’ prior written notice to County, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Stipulated Sum shall be increased by the amount of Design-Builder’s reasonable costs of shutdown, delay, and start-up, plus interest as provided for in the Design-Build Documents.

§5.12.2 If County is entitled to reimbursement or payment from Design-Builder under, or pursuant to, the Design-Build Documents, such payment shall be made promptly upon written demand by County. Notwithstanding anything contained in the Design-Build Documents to the contrary, if Design-Builder fails to promptly make any payment due County, or County incurs any costs and expenses to cure any default of Design-Builder to correct defective Work, County shall have an absolute right to offset such amount against the Stipulated Sum and may, in County’s sole discretion, elect to either:

a. deduct any amount equal to that which County is entitled from any payment then or thereafter due Design-Builder from County; or

b. issue a written notice to Design-Builder reducing the Stipulated Sum by an amount equal to that which County is entitled.

§ 5.13 Substantial Completion.

§5.13.1 Substantial Completion is the stage in the progress of the Work when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Design-Build Documents so that County can occupy or use the Work or a portion thereof for its intended use; provided, however, that as a condition precedent to Substantial Completion, County has received all final certificates of occupancy (unless only a temporary certificate of occupancy may permit County’s occupancy of the Project/Project Site) and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

§5.13.2 When Design-Builder considers that the Work, or a portion thereof which County agrees to accept separately, is substantially complete, Design-Builder shall prepare and submit to County 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

§5.13.3 Upon receipt of Design-Builder’s list described in Section 5.13.2, above, County shall make an inspection to determine whether the Work, or designated portion thereof, is substantially complete. If County’s inspection discloses any item, whether or not included on Design-Builder’s list, which is not substantially complete as contemplated under the Design-Build Documents, Design-Builder shall add it to the Pre-Final Punchlist. If County’s opinion during the inspection for Substantial Completion is that the Project, or the designated portion of thereof which County has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete or contains an unreasonable number of incomplete items, then County’s Designated Representative (including an inspecting Architect) may terminate the inspection and inform Design-Builder to make the Project ready for inspection and re-submit an amended list of items to be completed or corrected. If County is required to make more than one (1) such additional inspection, the Design-Builder’s Designated Representative (including an inspecting Architect) shall promptly notify County in writing, which seven (7) days after serving written notice to Design-Builder and without prejudice to any other remedy, may deduct the cost of Designated Representative’s additional services made necessary thereby from any payments due Design-Builder under the Design-Build Contract. If County determines that either Substantial Completion has not occurred by the applicable completion deadline, or despite Design Builder’s claim that such event has occurred, including circumstances whereby County’s Designated Representative terminates an inspection, County shall inform Design-Builder in writing, setting out with reasonable specificity, why Substantial Completion has not occurred.

§5.13.4 In the event of a dispute regarding whether Design-Builder’s Work is substantially complete (i.e., reached Substantial Completion), the dispute shall be resolved pursuant to Section A.4 of “Exhibit A”, Terms and Conditions (entitled “DISPUTE RESOLUTION”) attached hereto.

§5.13.5 When the Work, or a designated portion thereof, is substantially complete (i.e., reached Substantial Completion), Design-Builder shall prepare for County’s signature an Acknowledgment of Substantial Completion which, when signed by County, shall establish:

a. the date of Substantial Completion of the Work, or the designated portion thereof;

b. when County shall become responsible for security, maintenance, heat, utilities, damage to the Work, or the designated portion thereof, and insurance, unless County has begun to occupy any portion of the Facility, either partially or completely, at which time the terms and provisions contained in Section 5.14.1, below, shall govern; and

c. the time within which Design-Builder shall furnish all items on the list accompanying the Acknowledgment.

When County’s inspection discloses that the Work, or a designated portion of thereof, is substantially complete (i.e., reached Substantial Completion) in accordance with the terms of the Design-Build Documents, County shall sign the Acknowledgment. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work, or designated portion thereof.

§5.13.6 Upon execution of the Acknowledgment and receipt of written consent of the Design-Builder’s surety, if any, County shall make payment of retainage applying to such Work or designated portion thereof in accordance with Section 2252.032(2), Texas Government Code, and
the applicable terms of the Design-Build Contract. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§5.13.7 Design-Builder shall deliver to County a complete copy, in an electronic or digital format, of all operating and maintenance data for all equipment installed as part of the Work, with said binder to be delivered on or before Substantial Completion of the Work, as more particularly described in the Specifications. If requested by County, Design-Builder shall instruct County in the proper use, maintenance, and emergency repair of all mechanical systems or equipment at the time of completion and before final acceptance of the Project by County. Design-Builder shall call particular attention to safety measures that should be followed during operation of any such mechanical systems or equipment.

§ 5.14 Partial Occupancy or Use.

§5.14.1 County may occupy or use any completed, or partially completed, portion of the Facility at any stage, provided that such occupancy or use is consented to by County’s insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work at the Facility, including the City of San Antonio’s authorization through an issuance of a Certificate of Occupancy for the areas to be occupied by County. Such partial occupancy or use may commence whether or not the applicable portion is substantially complete, provided County and Design-Builder have accepted, in writing, the responsibilities assigned to each of them and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. County and Design-Builder agree that County shall assume responsibility for security, maintenance, heat, utilities, damage to the Work, and insurance covering that portion of the Facility which is to be occupied by County, upon receipt from Design-Builder by County of a Certificate of Occupancy. When Design-Builder considers a portion of the Facility to be substantially complete, Design-Builder shall prepare and submit a list to County as provided under Section 5.13.2, above. Consent of Design-Builder to partial occupancy or use of the Facility by County shall not be unreasonably withheld, delayed, or conditioned. The stage of the progress of the Work shall be determined by written agreement between County and Design-Builder. Design-Builder shall exercise reasonable diligence, consistent with the Project Schedule, to obtain all required partial or temporary occupancy permits. Work performed on the Project Site by third parties on County’s behalf does not constitute occupancy or use of the Facility by County.

County’s use of any portion of the Facility prior to Substantial Completion of the Project shall not be construed as waiver of any claim by County arising from:

a. unsettled lien or claims;

b. faulty or defective Work;

c. failure of the Work to comply with the requirements of the Design-Build Documents; or

a. any other right of County under the Design-Build Documents.

§5.14.2 Immediately prior to such partial occupancy or use, County and Design-Builder shall jointly inspect the area of the Facility to be occupied, or portion of the Work to be used, to determine and record the condition of the Work. Following the joint inspection, Design-Builder shall promptly update the list of items to be completed or corrected prior to Final Payment as set forth in Section 5.13.2, above, with the items identified in the inspection and promptly provide County with a complete copy of such list, upon County’s request.
§5.14.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Facility shall not constitute acceptance of such Work not complying with the requirements of the Design-Build Documents nor does partial occupancy waive Design-Builder's duty to complete the remaining Work within the Contract Time. However, while County has such possession or use, Design-Builder shall be relieved of the responsibility for the loss of, or damage to, the Work resulting from County’s possession or use of that part of the Facility.

§5.15 Final Payment.

§5.15.1 Final Payment, constituting the entire unpaid balance of the Stipulated Sum, shall be made by County to Design-Builder in accordance with subsection 2251.021(a), Texas Government Code, after Design-Builder has fully performed the Design-Build Contract, including the requirements below, except for Design-Builder’s responsibility to correct non-conforming Work discovered after Final Payment or to satisfy other requirements, if any, which extend beyond Final Payment.

§5.15.2 Upon receipt of written notice by Design-Builder or Project Architect that the Work is ready for final inspection and acceptance, and upon receipt of a final Pay Application, County shall promptly make such inspection. If and when County finds the Work acceptable in accordance with Design-Build Documents and fully performed and delivered, County shall, subject to Section 5.15.8, below, promptly make Final Payment under the Design-Build Contract to Design-Builder.

§5.15.3 At any time following completion of all Work, including the Substantial Completion of all Punchlist items, cleanup, and the delivery of record documents, Design-Builder shall submit a certified Pay Application for Final Payment, including all sums held as retainage, to County.

§5.15.4 Design-Builder shall submit, prior to, or with the Pay Application for Final Payment, final copies of all Close Out Documents, including maintenance and operating instructions, evidence of Design-Builder’s continuing insurance compliance, all applicable guarantees and warranties, certificates, record documents, and all other items required by the Design-Build Documents. Design-Builder shall also submit a Consent of Surety to Final Payment, an affidavit that all payrolls, bills for materials and equipment, subcontracted Work, and other indebtedness in connection with the Work, except as specifically noted, have been paid or will be paid from the proceeds of the Final Payment. Design-Builder must furnish County with documentation establishing payment, or satisfaction of all such obligations, such as releases, and waivers of claims arising out of the Design-Build Documents – such waivers and releases can be conditional upon receipt of Final Payment. Notwithstanding anything to the contrary stated in this Section 5.15.4, Design-Builder shall not be required to provide, nor shall County be obligated to accept and be bound by, any form of release or waiver prepared or submitted in contravention to the applicable provisions contained in Section 53.283, Texas Property Code. County is entitled to rely upon such affidavit, and Design-Builder may not submit a claim on behalf of a Contractor, Subcontractor, Supplier, or other vendor if that claim has not been noted as an exception in the affidavit.

§5.15.5 County may deduct from the Final Payment all sums due from Design-Builder for any reason, and may apply for such purpose all Delay Liquidated Damages or other amounts previously withheld by County for any purpose. If the Certificate of Final Completion notes any Work remaining, which is incomplete, or defects that are not remedied, County may deduct the reasonable cost of remedying such deficiencies from the Final Payment. If such deductions are made, County shall identify each deduction made and the reason therefore, and furnish Design-Builder with an explanation of the deduction and the amount deducted on or by the twenty-first (21st) day after County’s receipt of an approved or deemed approved Application for Final Payment and the required affidavit.
§5.15.6 Final Payment shall become due and payable by County, subject to all allowable offsets and deductions, in accordance with Section 2251.021(a), Texas Government Code, following County's approval of the Application for Final Payment. If Design-Builder disputes any amount deducted by County, Design-Builder shall give notice of the dispute on or before the thirtieth (30th) day following receipt of the Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.

§5.15.7 Final Payment shall constitute a waiver of all claims by County relating to the condition of the Work, except those arising from:

a. faulty or defective Work appearing after Substantial Completion (i.e., any latent defect);

b. failure of the Work to comply with the requirements of the Design-Build Documents;

c. terms of any warranties required by the Design-Build Documents or implied by applicable law;

d. liens, Claims, security interests, or encumbrances arising out of the Design-Build Documents and unsettled; and

e. claims arising from personal injury suffered, or property damage sustained, by any third party.

Final Payment shall constitute a waiver of all claims by Design-Builder, except those specifically identified in writing and submitted to County prior to the submission of the Application for Final Payment and any defenses to claims set forth above in subsections 5.15.7 a. through e. However, this Agreement shall not be deemed fully performed by Design-Builder and closed until the expiration of all applicable guarantee and warranty periods.

§5.15.8 Neither the Final Payment nor any remaining retained percentage will become due and payable until Design-Builder submits to County each of the following:

a. an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which County or County’s property might be responsible or encumbered (less any amount withheld by County under the Design-Build Contract) have been paid or otherwise satisfied, except for claims noted in Design-Builder’s release under clause 5.15.8.e, below;

b. a certificate evidencing that insurance required by the Design-Build Documents to remain in force after Final Payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days’ prior written notice has been given to County;

c. a written statement that Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents;

d. consent of surety, if any, to Final Payment;
e. a release of all claims against County associated with Final Payment and arising by virtue of this Agreement in accordance with both the applicable provisions of Sections 53.283 and 53.284, Texas Property Code, other than claims, in stated amounts, that Design-Builder has specifically excepted from the operation of the release; and

f. if required by County, other data establishing payment or satisfaction of obligations; such as releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by County (except for claims noted in Design-Builder’s release under clause 5.15.8.e, above).

If a Subcontractor who has filed a lien refuses to furnish a release or waiver required by County in accordance with both the applicable provisions of Sections 53.283 and 53.284, Texas Property Code, Design-Builder must furnish a bond satisfactory to County to indemnify, defend, and hold County harmless from and against such lien. If such lien remains unsatisfied after payments are made, Design-Builder shall promptly refund to County all money that County may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys’ fees.

Moreover, if such lien remains unsatisfied or any other lien is recorded after payments are made, Design-Builder shall promptly refund to County all money that County may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys’ fees, unless Design-Builder fully bonds around such lien. In addition to the items listed in Section 5.15.8, above, to be submitted before Final Payment will be made or remaining retainage released, Design-Builder shall deliver final certificates from local inspection authorities and all other items which are required by the Design-Build Documents relating to the Final Completion and the close-out of the Project.

§5.15.9 If, after County determines that either (a) Design-Builder’s Work, or a designated portion thereof, is substantially completed (i.e., reached Substantial Completion), or (b) Final Completion thereof is materially delayed through no fault of Design-Builder or by issuance of a Change Order affecting Final Completion, County shall, upon application by Design-Builder, make payment of the balance due for that portion of the Work which is fully completed and accepted. If the remaining balance for Work that is not fully completed or corrected is less than the amount of retainage stipulated in the Design-Build Documents, and if any performance or payment bonds have been furnished and are still valid, the written consent of Design-Builder’s surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design-Builder. Such payment shall be made under terms and conditions governing the Final Payment, except that it shall not constitute a waiver of claims.

§5.15.10 Acceptance of Final Payment by Design-Builder, a Contractor, Subcontractor, or material Supplier shall constitute a waiver of claims by that payee, except those previously made in writing and identified by that payee as unsettled at the time of the final Pay Application.

§5.16 Release of Liens.

§5.16.1 Design-Builder warrants that title to all Work (including all materials, fixtures and equipment associated therewith) other than Instruments of Service covered by a Pay Application will pass to County no later than the time of payment. Design-Builder further warrants that, upon submittal of a Pay Application, all Work for which Certificates for Payment have been previously issued and payments received from County shall, to the best of Design-Builder’s knowledge,
information, and belief, be free and clear of liens, security interests, or encumbrances in favor of Design-Builder, as well as its Contractors, Subcontractors, material Suppliers, or other persons or entities making a claim by reason of having provided labor, materials, or equipment relating to the Work or Project. Upon request of the County, Design-Builder will provide County with a list of all subcontractors and vendors of Design-Builder within sixty (60) days of execution of the Agreement, and the list must be updated with each Pay Application, in order that County may have the opportunity, but not the duty, to confirm that the liens, security interests, and encumbrances have been waived or released.

§5.16.2 Provided that Design-Builder has been paid by County for all sums (or the applicable portion thereof) due to Design-Builder pursuant to this Agreement (other than under the circumstances of Section 5.7, above), Design-Builder shall not voluntarily permit any laborer's, materialmen's, mechanic's, or other similar lien, security interest, or encumbrance to be filed, or otherwise imposed, on any part of the Work, the Facility (including the entire DDRF Facility and its campus), or the Project Site by it or any of its Contractors, Subcontractors or Suppliers. If any laborer's, materialmen's, mechanic's, or other similar lien, security interest, encumbrance, or claim thereof is filed, or otherwise imposed, against any part of the Work, the Facility (including the entire DDRF Facility and its campus), or the Project Site in contravention of this Section 5.16.2 by Design-Builder or one of Design-Builder's Contractors, Subcontractors or Suppliers, the Design-Builder, within thirty (30) days of the filing of such lien, interest, or encumbrance, or other imposition thereof, shall cause such lien, interest, or encumbrance to be released or otherwise discharged, except as to liens, security interest, or encumbrance which Design-Builder is contesting in good faith by appropriate action diligently pursued, provided, that Design-Builder has notified County in writing of the nature of such lien, interest, or encumbrance and informed County of the type of action being pursued by Design-Builder and, if requested by County has provided County with a bond sufficient to cover such claim (or cause the surety to acknowledge, in writing, that the lien claim is covered by the payment bond) in the event Design-Builder is unsuccessful in contesting same or has made other arrangements satisfactory to County. If, however, Design-Builder, within the aforesaid thirty (30) day period, does not cause such lien, security interest, or encumbrance either to be released or discharged forthwith or contests same in the manner provided hereinafore, then County has the right to deduct one hundred fifty per cent (150%) of the amount of the applicable lien claim from the next progress payment until Design-Builder shall have caused such lien, security interest, or encumbrance to be released and discharged or otherwise contested same in the manner provided hereinafore. Design-Builder shall indemnify, defend, and hold harmless County, as well as its elected officials, employees, agents, County Architect, and representatives from and against all claims, losses, demands, causes of action, or suits of whatever nature arising out of any such lien, security interest, or encumbrance, or that part of the Work covered thereby.

§5.16.3 At the time each progress payment is made to Design-Builder, Design-Builder will deliver to County a Contractor's Conditional Partial Release of Lien covering such progress payment and an Unconditional Partial Release of Lien for the prior progress payment and Final Payment received by Design-Builder, all in accordance the applicable provisions of Sections 53.283 and 53.284, Texas Property Code.

§5.16.4 At any time during the duration of the Design-Build Contract, upon written request submitted by the County, Design-Builder shall promptly submit to County a Subcontractor's Partial Release of Lien instrument for all Subcontractors and Suppliers who are furnishing or have already furnished any labor and/or materials with respect to the construction of the improvements who or which performed any Work, related services and/or provided any materials for the Project covered by the preceding Pay Application and were paid (or were supposed to have been paid) from such progress payment. Each release of lien shall waive and release all rights of the affiant to claim
or assert any lien, security interest, or encumbrance against the Project, either for the period through the last day included in the preceding Pay Application (the “Partial Release of Lien”) or for the affiant’s completed work (including any Work) on the Project (“Final Release of Lien”). If a Subcontractor or Supplier refuses to provide a release of lien in connection with any portion of the Work or Project, Design-Build must, at its option, either furnish (a) a bond under Subchapter I, Chapter 53, Texas Property Code, or (b) a bond for release of lien under Subchapter H, Chapter 53, Texas Property Code.

§5.16.5 In each Pay Application, Design-Build shall certify as to Contractors, Subcontractors, and Suppliers as follows: “There are no known mechanics or materialmen liens outstanding as of the date hereof except as disclosed in this certificate. All due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application, and, except for such bills not paid but so included (or such bills as are being contested in good faith by appropriate action diligently pursued, provided Design-Build has notified County of the nature of such lien and informed County of the type of action being pursued by Design-Build and, if requested by County has provided County with a bond sufficient to cover such claim in the event Design-Build is unsuccessful in contesting same or has made other arrangements satisfactory to County), there is no known basis for the filing of any mechanics or materialmen liens on the Work, and waivers from all subcontractors and materialmen for which payment was made from the last advance made by County have been obtained.”

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 The method of dispute resolution with respect to any dispute arising between County and Design-Build in connection with the Work, the Project, or the Design-Build Contract shall be in accordance with Article A.4 contained in Exhibit A to this Agreement, entitled “Terms and Conditions”.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§7.1 County’s Designated Representative is:

Director
Bexar County Facilities Management Department
1948 Probandt Street
San Antonio, Texas 78214

§7.1.1 County’s Designated Representative identified above, or his designated representative, shall be authorized to act on County’s behalf with respect to the Project.

§7.2 Design-Build’s Designated Representative is:

Gary Joeris
Joeris General Contractors
823 Arion Parkway
San Antonio, TX 78216

§7.2.1 Design-Build’s Designated Representative identified above shall be authorized to act on Design-Build’s behalf with respect to the Project.
§7.3 Neither County's nor Design-Builder's Designated Representative shall be changed without giving at least ten (10) days prior written notice of such change to the other Party.

§7.4 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as it might have been amended or supplemented by other provisions of the Design-Build Documents.

§7.5 Priority of Documents. If there is any inconsistency or conflict between the provisions of this Agreement and the terms and conditions contained in any of the other Design-Build Documents, the provisions of this Agreement shall control and govern. In connection therewith, the most recently issued document takes precedence over previous issues of the same document. The order of precedence is as follows with highest authority listed as "a":

a Modifications to this Agreement (including Change Orders, and other authorized changes to the Work) made in accordance with the terms of this Agreement;

b Exhibit G, Bexar County's American Rescue Plan Act (ARPA) Contract Addendum;

c this Agreement;

d Exhibit F, Stipulated Sum;

e Exhibit A, Terms and Conditions, to this Agreement;

f Exhibit E, County's Requirements for Criminal Background Checks, to this Agreement;

g Exhibit C, Supplementary Conditions, to this Agreement;

h Drawings and Specifications produced by the Design-Builder in connection with the Project;

i Design-Builder's Proposal in connection with RFQ and RFP Event #1009, including Design-Builder's Qualifications and Exclusions Accepted by County;

j Exhibit B, Project Schedule, to this Agreement;

k Project Criteria in connection with the Project;

l Exhibit D, General Conditions, to this Agreement; and

m the County's RFQ and RFP Event # 1009 and any amendments thereto.

§7.6 Design-Builder understands and agrees that County or its designee may conduct an audit or investigation in connection with any funds received by Design-Builder in connection with the Work or Project to the extent that any such funds are used, or intended or designated to be used, to pay any cost or expense which is the basis of any charge to County. Design-Builder further agrees to cooperate fully with the above parties or organizations in the conduct of the audit or investigation, including providing all records requested concerning the Design-Build Contract, the Project, and the handling or expenditure of such funds. Design-Builder will also be required to ensure that this clause concerning the authority to audit funds which are received indirectly by any Contractor, Subcontractor, Supplier, or other person or organization working under the direction of Design-Builder in connection with any Work or the Project

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through the Selected Contractor, as well as the requirement to cooperate, must be included in any subcontract that it awards.

§7.7 No public disclosures or news releases pertaining to any Design-Build Document regarding the Project or any of the terms and provisions contained such contract shall be made without prior, written approval of the Bexar County Commissioners Court.

§7.8 It is the policy of County to encourage, promote, increase, and improve procurement opportunities to assure that qualified small, minority or women-owned business enterprises that provide high-quality, cost competitive products and services are provided the maximum practicable opportunity to actively participate in County’s supplier and contractor procurement opportunities. Design-Builder must have completed and furnished to County after the award, but prior to execution of this Agreement, true and complete answers to County’s Workforce/Employee Composition Questionnaire. As a condition precedent to commencing any Work under this Agreement, County has the right, at any time, to require Design-Builder to complete and furnish to County a current Workforce/Employee Composition Questionnaire form, which shall be completed and furnished to the County promptly after County’s written request, failing in which County will have the right to terminate this Agreement.

§7.9 Design-Builder shall, at a minimum, be obligated as follows:

a. To promptly advise County, in writing, of any errors or other discrepancies coming under observation during the progress of the Work or services performed under the Design-Build Contract for the Project.

b. To submit regular (i.e., weekly and/or monthly) written, detailed progress and status reports to County’s Designated Representative, in such form and format as reasonably required by County.

§7.10 Design-Builder will not be allowed to sell, assign, transfer, or convey the Design-Build Contract (or any portion thereof) or other benefits resulting from such contract, in whole or in part, without the prior written consent of the Bexar County Commissioners Court.

§7.11

a. If performance by Design-Builder of any of its obligations under the Design-Build Contract shall be interrupted or delayed by or as a consequence of a fire, flood, or other act of God, war, insurrection, civil disturbance, or act of state or any other act or event which is beyond its reasonable control and not caused by, or arising out of, or resulting from, the fault, negligence, or willful misconduct of Design-Builder, any of its Contractors, Subcontractors, or Suppliers, or any of their respective officers, employees, agents, invitees, or representatives, then Design-Builder shall be excused from such performance for the period of time such occurrence shall have lasted or such period as is reasonably necessary to rebuild or take other action necessary to resume performance. The period of time reasonably necessary to rebuild or take other action necessary to resume performance shall be as determined by the agreement of the Parties, which agreement shall be negotiated and arrived at in good faith.

b. Design-Builder shall promptly notify County’s Designated Representative, in writing, of any force majeure type matter or event covered above, the occurrence of which interferes or threatens to interfere with the performance of any of its obligations under the Design-Build Contract, describing the force majeure event in detail and stating its known or estimated duration. Upon receipt of such notice, Design-Builder and the Bexar County Commissioners Court shall promptly consult and reasonably cooperate as to measures which may be taken to overcome the
interference or as to alternative measures which may be undertaken by the parties with a view to the continued performance of the Design-Build Contract as soon as possible.

§7.12 Design-Builder acknowledges that it has been engaged as an independent contractor and further acknowledges that County will have no responsibility to provide any transportation, insurance, or other fringe benefits normally associated with employee status. Nothing contained or inferable in the Design-Build Contract will be deemed or construed to (a) make Design-Builder an agent, servant, or employee of County, or (b) create any partnership, joint venture, or other association between County and Design-Builder in connection with the Design-Build Contract or the Project. Any direction or instruction by County or any of its authorized representatives in respect of the Work or services to be performed shall relate to the results County's desires to obtain from the services or Work, and shall in no way affect Design-Builder's independent contractor status described herein.

Design-Builder, in accordance with its status as an independent contractor, will be required to covenant and agree that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, elected official, employee, or agent of County by reason hereof, and that it will not by reason hereof make any claim, demand, or application to or for any right or privilege applicable to an officer, partner, elected official, employee, or agent of County including, but not limited to, unemployment insurance benefits, social security coverage, or retirement benefits. Design-Builder will be required to agree to make its own arrangements for any of such benefits as it may desire and agree that it will be responsible for all income taxes required by applicable law.

§7.13 If County terminates this Agreement for any reason, Design-Builder will not be relieved of liability to County for damages sustained by County by reason of any breach of the Design-Build Contract by Design-Builder or otherwise, and County may withhold any payments to Design-Builder for the purpose of an offset until such time as the amount of damages due County from Design-Builder can be determined. The Design-Build Contract will include terms and conditions associated with the determination, imposition, and payment of Delay Liquidated Damages in connection with both the Substantial Completion and Final Completion of the Project.

§7.14 If subcontracting with another company or individual is proposed by Design-Builder, that fact, along with providing the same information for the subcontractor that is required to be provided by Design-Builder under the Final RFP, must be provided in writing to County.

§7.14a Design-Builder will be required to obligate all its employees and volunteers, as well as those of its Subcontractors, who or which perform any service or Work in connection with the Project or on the Project Site to have passed a current criminal history background check. Additionally, Design-Builder shall comply with all other applicable laws and regulations of the State of Texas concerning background checks that may exist throughout the term of the Design-Build Contract, as well as the checklist set forth on Exhibit E, a copy of which is attached to and made a part of this Agreement. Unless expressly prohibited by applicable federal or Texas law, Design-Builder will also be required to promptly furnish the results of such background checks to County upon request. Further, Design-Builder will be obligated to submit to County an updated Certification of Criminal History Background Checks within seven (7) Days of any change in circumstances or staffing that causes information in such Certification to be omitted, incorrect, or incomplete.

§7.15 County will not incur a debt or obligation to pay Design-Builder any amounts if County does not have the current funds available to pay, unless the Design-Build Contract includes a provision for County to appropriate funding for the debt or obligation.
§7.16 At a minimum, Design-Build will be required to provide the following indemnity obligations under the Design-Build Contract:

a. **For Design Services Only:**

WITH RESPECT TO ANY AND ALL ARCHITECTURAL AND ENGINEERING-RELATED WORK AND SERVICES PERFORMED OR PROVIDED IN CONNECTION WITH THE DESIGN-BUILD CONTRACT, DESIGN-BUILDER AGREES TO INDEMNIFY AND HOLD HARMLESS COUNTY AND ITS ELECTED OFFICIALS, EMPLOYEES, REPRESENTATIVES, AND AGENTS (INDIVIDUALLY AND COLLECTIVELY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY DAMAGES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY OR DEATH, AND PROPERTY DAMAGE MADE UPON THE INDEMNIFIED PARTY AND CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL OR PROPERTY INFRINGEMENT, OR THE FAILURE TO PAY A SUB-CONSULTANT, SUBCONTRACTOR, OR SUPPLIER COMMITTED BY DESIGN-BUILDER, INCLUDING ITS EMPLOYEES, OFFICERS, AGENTS AND SUB-CONSULTANTS, SUBCONTRACTORS, OR SUPPLIERS, WHILE IN THE PERFORMANCE OF DESIGN SERVICES PERFORMED OR PROVIDED BY ANY ARCHITECT OR ENGINEER UNDER THIS AGREEMENT OR IN CONNECTION WITH THE PROJECT. DESIGN-BUILDER SHALL ALSO PROMPTLY REIMBURSE COUNTY FOR ITS REASONABLE ATTORNEY FEES (IN PROPORTION TO THE LIABILITY OF DESIGN-BUILDER ASSOCIATED WITH OR RELATING ONLY TO DESIGN SERVICES) IF SO INCURRED IN COUNTY’S DEFENSE OF ANY OF THE ABOVE-DESCRIBED ACTIONS. DESIGN-BUILDER SHALL PROMPTLY ADVISE THE INDEMNIFIED PARTY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE DESIGN-BUILDER OR ANY ARCHITECT, ENGINEER, ARCHITECTURAL FIRM, OR ENGINEERING FIRM EMPLOYED OR RETAINED BY DESIGN-BUILDER ARISES OUT OF ARCHITECT'S, ENGINEER’S, ARCHITECTURAL FIRM'S, OR ENGINEERING FIRM’S ACTIVITIES UNDER THIS AGREEMENT OR IN CONNECTION WITH THE PROJECT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO, AND DO NOT CREATE OR GRANT, ANY RIGHTS, CONTRACTUALLY OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

THE INDEMNITY PROVIDED FOR IN THE IMMEDIATELY PRECEDING PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE INDEMNIFIED PARTY IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT THE COUNTY AND DESIGN-BUILDER (INCLUDING ANY ARCHITECT, ENGINEER, ARCHITECTURAL FIRM, OR ENGINEERING FIRM EMPLOYED OR RETAINED BY CONTRACTOR) ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPOINTED COMPARATIVELY IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF TEXAS.

b. **For Construction Services Only:**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN EFFECT AS OF THE EFFECTIVE DATE, WITH RESPECT TO ANY CONSTRUCTION-RELATED
SERVICES PERFORMED OR PROVIDED UNDER THE DESIGN-BUILD CONTRACT. DESIGN-BUILDER SHALL FULLY DEFEND, INDEMNIFY, AND SAVE HARMLESS EACH INDEMNIFIED PARTY FROM AND AGAINST ALL LOSSES, EXPENSES, LIENS, CLAIMS, DEMANDS, DAMAGES, PENALTIES, FINES, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER WHATSOEVER (COLLECTIVELY, THE “CLAIMS”), FOR (1) ANY INJURY TO, OR DEATH OF, ANY THIRD PARTY PERSON (INCLUDING, WITHOUT LIMITATION, ANY OF COUNTY’S ELECTED OFFICIALS OR EMPLOYEES); (2) ANY LOSS OR DESTRUCTION OF, OR DAMAGE TO, ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY PROPERTY BELONGING TO COUNTY), (3) ANY VIOLATION OR ALLEGED VIOLATION OF ANY APPLICABLE LAW, RULE, REGULATION, OR LEGAL MANDATE, AND (4) ANY OTHER LIABILITY, DAMAGE, FINE, OR PENALTY (EXCEPT WHERE REIMBURSEMENT FOR FINES OR PENALTIES IS PROHIBITED BY APPLICABLE LAW) OTHER THAN ANY CLAIM COVERED BY A SEPARATE INDEMNITY OBLIGATION PROVIDED BY DESIGN-BUILDER AND CONTAINED IN THIS AGREEMENT, INCLUDING ALL COSTS OF DEFENSE, ATTORNEY’S FEES, AND SETTLEMENTS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH DESIGN-BUILDER’S NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF ITS OBLIGATIONS HEREUNDER, OR OTHERWISE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SERVICES OR THE WORK OR THE PERFORMANCE OR FAILURE TO PERFORM THE SERVICES OR THE WORK.

NOTWITHSTANDING ANYTHING TO THE CONTRARY STATED IN OR IMPLIED IN THE IMMEDIATELY PRECEDING PARAGRAPH, UNDER NO CIRCUMSTANCES SHALL DESIGN-BUILDER BE REQUIRED TO INDEMNIFY, HOLD HARMLESS, OR DEFEND ANY INDEMNIFIED PARTY OR THIRD PARTY AGAINST ANY CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, OR THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE BY THAT INDEMNIFIED PARTY, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY WHICH IS UNDER THE CONTROL OR SUPERVISION OF A INDEMNITEE, OTHER THAN THE DESIGN-BUILDER OR ITS AGENT, EMPLOYEE, OR SUBCONTRACTOR OR ANY TIER. THE OBLIGATIONS OF DESIGN-BUILDER HEREUNDER SHALL SURVIVE TERMINATION OF THE DESIGN-BUILD CONTRACT.

ADDITIONALLY, DESIGN-BUILDER SHALL, AT ITS SOLE COST AND EXPENSE, DEFEND EACH INDEMNIFIED PARTY AGAINST, HOLD THEM HARMLESS, AND INDEMNIFY, PAY AND DISCHARGE THEM IN ALL SUITS, ACTIONS AND PROCEEDINGS FOR ANY ACTUAL OR ALLEGED INFRINGEMENT ARISING OUT OF THE USE OF DESIGN-BUILDER’S WORK PRODUCT, THE WORK, OR THE SERVICES, AND SHALL PAY AND DISCHARGE ANY AND ALL JUDGMENTS OR DECREE WHICH MAY BE RENDERED THEREIN AGAINST THEM OR ANY OF THEM; PROVIDED, HOWEVER, DESIGN-BUILDER’S OBLIGATION OF INDEMNITY HEREUNDER SHALL ONLY BE APPLICABLE FOR INFRINGEMENT OF A PATENT OR OTHER PROPRIETARY RIGHT THAT ARISES OUT OF DESIGNS, PROCESSES OR PRODUCTS IN THE WORK OR SERVICES THAT THE DESIGN-BUILDER HAS RECOMMENDED OR CAUSED TO BE USED FOR OR IN CONNECTION WITH THE PROJECT OR THAT ARISE OUT OF THE USE OF THE DESIGN-BUILDER’S WORK PRODUCT.

c. Immunity
NOTHING IN THIS SECTION SHALL BE INTERPRETED TO CONSTITUTE A WAIVER OF EITHER ANY GOVERNMENTAL OR SOVEREIGN IMMUNITY AVAILABLE UNDER THE TEXAS CONSTITUTION OR OTHER APPLICABLE TEXAS LAW, OR ANY AVAILABLE DEFENSES UNDER APPLICABLE TEXAS LAW.

d. In claims against any person or entity indemnified under this Section 7.17 by an employee of Design-Builder, the Project Architect, a Contractor, a Subcontractor, or anyone employed by them, either directly or indirectly, or anyone for whose acts they may be liable, the indemnification obligation under this Section 7.17, shall not be restricted by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, the Project Architect, or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

e. DESIGN-BUILDER'S INDEMNITY OBLIGATIONS UNDER THIS SECTION 7.17 SHALL ALSO SPECIFICALLY INCLUDE, WITHOUT LIMITATION, ALL FINES, PENALTIES, DAMAGES, LIABILITY, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR IN CONNECTION WITH ANY:

A. VIOLATION OF OR FAILURE TO COMPLY WITH ANY PERMIT, LAW, STATUTE, ORDINANCE, RULE, REGULATION, CODE, OR REQUIREMENT OR LAWFUL ORDER OF ANY GOVERNMENTAL AUTHORITY THAT BEARS UPON THE PERFORMANCE OF THE WORK BY DESIGN-BUILDER, A CONTRACTOR OR SUBCONTRACTOR, OR ANY PERSON OR ENTITY FOR WHOM THEY ARE RESPONSIBLE;

B. MEANS, METHODS, PROCEDURES, TECHNIQUES, OR SEQUENCES OF EXECUTION OR PERFORMANCE OF THE WORK; AND

C. FAILURE TO SECURE AND PAY FOR PERMITS, FEES, APPROVALS, LICENSES, AND INSPECTIONS THAT ARE DESIGN-BUILDER'S RESPONSIBILITY UNDER THE DESIGN-BUILD DOCUMENTS.

f. DESIGN-BUILDER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS EACH COUNTY INDEMNITEE FROM AND AGAINST ANY COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY COUNTY IN ENFORCING ANY OF DESIGN-BUILDER'S DEFENSE, INDEMNITY, AND HOLD-HARMLESS OBLIGATIONS UNDER THE DESIGN-BUILD CONTRACT.

§7.17 County will not make advance payments to Design-Builder or any third party pursuant to this Agreement.

§7.18 County will not agree to any terms or conditions that cause County to lend its credit or grant public money or anything of value to Design-Builder.

§7.19 County will not agree to any terms or conditions that cause County to violate any applicable federal, Texas, or local procurement laws.
§7.20 County will not agree to allow Design-Builder to limit its liability for any breach or default of the Design-Build Contract to the contract amount or to the amount that County has paid up to the time of the breach or default.

§7.21 County will be entering into this Agreement in reliance on Design-Builder’s recognized reputation with respect to the performance of the Work, services, duties, and obligations under such agreement, including those associated with any architectural and engineering-related design services. Design-Builder will be required to perform all design services in connection with the Project diligently in accordance with the terms and provisions of the Design-Build Contract. In accordance with subsection 271.904(d), Texas Local Government Code, Design-Builder will also be obligated to perform, or ensure the completion of, all such design services: (a) with the professional skill and care ordinarily provided by competent architects and engineers practicing in the same or similar locality and under the same or similar circumstances and professional license, and (b) as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect or engineer, as applicable.

§7.22 At a minimum, Design-Builder will be required to agree to each of the following warranty obligations:

Design-Builder’s obligations under the Design-Build Contract will be in addition to, and not in substitution of, any other remedy that County will have thereunder, or at law or in equity. Any warranty repair or replacement associated with any construction-related services will be required to comply with the requirements of the Design-Build Contract (including any exhibits, schedules, or attachments thereto) and shall be verified by Design-Builder’s performance of testing as County may require. All costs incidental to and associated with such repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access to concealed areas, will be borne by Design-Builder. Design-Builder will be required to warrant such repaired or replaced construction-related service and work (including all Work) associated with the Project against defective materials, and workmanship for a period of one (1) year from County’s acceptance thereof.

All warranties associated with the construction-related services and work (including all Work) shall include all labor, and all equipment and materials installed, and shall be signed by and delivered to Design-Builder (or its authorized representative) and countersigned by the Subcontractor performing the same and/or the manufacturer thereof, as the case may be. Design-Builder will also be required to perform the construction-related services or work (including all Work) associated with the Project in such manner so as to preserve any and all such manufacturers’ warranties and guaranties. In addition to the foregoing, Design-Builder will be obligated to comply with all other warranties referred to in any other provision of the Design-Build Contract. Where more than one (1) warranty obligation applies hereunder, the more stringent warranty obligation will govern.

Design-Builder will be also be required to represent and warrant that all employees and personnel, including those of any of its Subcontractors, Suppliers, or sub-subcontractor, who are on (or have access to) the Project Site in connection with the Design-Build Contract have passed a current criminal history background check (including the requirements contained in Exhibit E to this Agreement) and are then-currently listed in Design-Builder’s Certification of Criminal History Background Checks.

§7.23 County will not agree to pay Design-Builder’s attorney’s fees or other legal costs under any circumstances.
§7.24 The Design-Build Contract will be governed and construed according to the laws of the State of Texas. At a minimum, Design-Builder will be required to comply with the applicable statutory provisions contained in Chapter 2269, Texas Government Code. The terms and conditions of the Design-Build Contract are (or are deemed) fully performable in Bexar County, Texas and venue for any dispute regarding the agreement or any work or service either performed or to be performed thereunder shall be in Bexar County, Texas.

(The remainder of this page shall remain intentionally blank.)
This Agreement entered into as of the day and year first written above.

COUNTY OF BEXAR
By: [Signature]
PETER SAKAI
County Judge
(Date) 1-23-2024

JOERIS GENERAL CONTRACTORS, LLC.
By: [Signature]
(Printed Name) Gary L. Joeris
(Title) Chief Executive Officer
(Date) January 12, 2024

APPROVED AS TO LEGAL FORM:

By: [Signature]
SIOBHAN K. KARGER
Assistant Criminal District Attorney - Civil Division

APPROVED AS TO FINANCIAL CONTENT: APPROVED AS TO GENERAL CONTENT

[Signature]
LEO CALDERA, CIA, CGAP
County Auditor

DAVID SMITH
County Manager

Curry, Dan
DAN CURRY
Director, Bexar County Facilities Management
Exhibit A –
Terms and Conditions

for the following PROJECT:

Bexar County Dual Diagnosis Residential Facility (DDRF) Recovery Center Intake Building and Campus Renovations Project
to be located at:

10975 Applewhite Road, San Antonio, TX 78224

The PROJECT involves the following Parties:

OWNER:
County of Bexar, a political subdivision of the State of Texas
Paul Elizondo Tower
101 W. Nueva
San Antonio, TX 78205

DESIGN-BUILDER:
Joeris General Contractors
823 Arion Parkway
San Antonio, TX 78216
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FOR EXHIBIT A

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ARTICLE A.1 GENERAL PROVISIONS

§A.1.1 THE PROJECT

The Project is the total design and construction of which the Work for the Facility performed under the Design-Build Documents may be the whole, or a part, and which may include design and construction by County or by separate contractors.

§A.1.2 DEFINITIONS FOR THE DESIGN-BUILD CONTRACT

Unless the context clearly requires another meaning, the following terms set forth anywhere in the Design-Build Contract shall have the meanings as follows:

a. **Acknowledgement** means an Acknowledgment of Substantial Completion.

b. **Agreed Change Order** has the meaning given such term in Section 10.16.1 of the Supplementary Conditions.

c. **Agreement** means that certain Design-Build Agreement between County and Design-Build in connection with the Work and Project to which this **Exhibit A** is attached and made a part thereof.

d. **Allowances** shall include each of the items and corresponding amounts contained in subsection 4.2.5 of the Agreement.

e. **Bridging Documents** means each of those documents provided to Design-Build in the RFQ.

f. **Change Authorization** means a Change Order Proposal which has been marked “Accepted” by County and, upon receipt of the Change Authorization by Design-Build, constitutes Notice to Proceed with the additional, altered, or modified Work described therein.

g. **Change Order** means a written modification of the Agreement between County and Design-Build, made either (1) unilaterally by County, or (2) by written agreement of both Parties. The term “Change Order” is further defined or described in Section 10.4 of the Supplementary Conditions (**Exhibit C**) and shall mean and include, collectively, either an Agreed Change Order or a Unilateral Change Order.

h. **Change Order Proposal** means a Design-Build-generated document in response to a Change Order Request, Change, Proposal Request, or Field Order that states the adjustment requested to the Stipulated Sum and/or Contract Time, if any, to perform the altered or modified Work requested.

i. **Change Order Request** or **Change Proposal Request** means a County-generated document that describes a proposed change in the Work, including sufficient information to inform Design-Build of the nature of the proposed change.

j. **Claim** has the meaning given such term in Section A.4.1.1 of this **Exhibit A**.

k. **Close-out Documents** means, collectively, the product brochures, product/equipment maintenance and operation instructions, manuals, guarantees, warranties, as-built record
documents, affidavits of payment, releases of lien and claim, etc., and as such may be further defined or identified and required by the Design-Build Documents.

l. **Conditional Partial Release of Lien** means a release that meets the requirements of Texas Property Code, Section 53.284(b), for progress payments and Texas Property Code, Section 53.284(d), for Final Payment.

m. **Construction Documents** means those plans and specifications prepared by Design-Builder’s Project Architect for the construction of the Project which have been reviewed and approved of, in writing, by County.

n. **Consultant** means a person lawfully licensed to practice engineering or an entity lawfully practicing engineering identified as such in the Agreement and having a direct contract with Design-Builder to perform design services for a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term “Consultant” also includes its authorized representative.

o. **Contract Sum** has the same meaning as the term, “Stipulated Sum”.

p. **Contract Time** is the period of time in Days between the Date of Commencement and the date of Substantial Completion of the Work, as possibly amended by a Change Order.

q. **Contractor** means a person or entity, other than the Project Architect, who or which has a direct contract with Design-Builder to perform all, or a portion, of the construction required in connection with the Work. The term “Contractor” is referred to throughout the Design-Build Documents as if singular in number and includes both Contractor and an authorized representative of the Contractor. The term “Contractor” does not include a separate contractor, as defined in Section A.6.1.2, below, or subcontractors of a separate contractor.

r. **County** means County of Bexar, Texas and its designated representatives (including the County’s Designated Representative).

s. **County Architect** means the licensed and professional architect or engineer employed by County to assist County in the review, evaluation, and/or assessment of all or part of the Design Services in accordance with the Design-Build Documents.

t. **County’s Construction Manager** means the County’s on-site representative during the Project who exercises certain power on behalf of County and undertakes certain contract administrative activities outlined in Section A.2.3.7 of this Exhibit A.

u. **County’s Contingency** has the meaning given such term in Section 10.12 of the Supplementary Conditions.

v. **County’s Designated Representative** is the Director of Bexar County’s Facilities Management Department, or his designated representative.

w. **Date of Commencement** is the date designated in the Notice to Proceed that Design-Builder shall commence the Work.

x. **Day** means a calendar day, unless some other definition for “day” is specifically stipulated for a specific purpose.
y. **Default Rate** means the applicable, non-usurious simple rate of interest permitted by applicable state law in connection with the collection of a past-due, contractual obligation.

z. **Delay Liquidated Damages** has the meaning given such term in Section 3.2 of the Agreement.

aa. **Delays** has the meaning given such term in Section A.7.2.3 of this Exhibit A.

bb. **Design-Build Contract** means all of the Design-Build Documents between County and Design-Builder which are set out in Article 1 of the Agreement.

c. **Design-Build Documents** mean those documents set out in Article 1 of the Agreement. For the purposes of the Design-Build Contract, the term does not include Shop Drawings, Product Data, Samples, and similar submittals.

d. **Design-Build Group** means, collectively, all the persons and entities who or which have contracted with Design-Builder or any of its Contractors, Subcontractors, or Suppliers to perform any Work, or provide any materials or equipment, in connection with any part or portion of the Project.

e. **Design-Builder** means the sole proprietorship, corporation, limited liability company, partnership (whether general or limited), firm, or other legal entity or organization that has contracted to perform the Work under the Design-Build Contract.

ff. **Design-Builder’s Contingency** has the meaning given such term in Section 5.9.1 of the Agreement.

gg. **Design Services** means the architectural and engineering services provided by Design-Builder through the Project Architect and other design professionals who are part of the Design-Build Group

hh. **Drawings** mean the work product of the Project Architect that depicts the location, quantity, and details of elements of the Work.

ii. **Effective Date** has the meaning given such term in the introductory paragraph of the cover sheet of the Agreement.

jj. **Facility** means any part or portion of the Bexar County Dual Diagnosis Rehabilitation Facility (DDRF) or its campus located at or in close proximity to 10975 Applewhite Rd., San Antonio, Texas, where any Work that is subject to the Design-Build Contract is performed, or any services, materials, or equipment in connection with such Work is provided.

kk. **Final Completion** means the date established by County, in writing in a certificate, when the Agreement is fully performed according to the Design-Build Documents and is acceptable to County. Unless otherwise specified in writing as agreed upon by the Parties, Design-Builder shall achieve Final Completion within thirty (30) days of Substantial Completion.

II. **Final Inspection** means an inspection conducted to determine that all deficiencies on the pre-final Punchlist, and all other deficiencies subsequently identified, have been corrected. A Final Inspection with a satisfactory outcome, as determined by County, results in a release of retainage and/or Final Payment under the Design-Build Contract.
mm. **Final Payment** means the final payment made by County to Design-Builder in accordance with Section 5.15 of the Agreement.

nn. **Final Punchlist** has the meaning given such term in Section 9.2 of the Supplementary Conditions.

oo. **Final Release of Lien** has the meaning given such term in Section 5.16.4 of the Agreement.

pp. **Governmental Authority** means any administrative, governmental, judicial, or regulatory agency, board, bureau, department, division, etc., at the federal, state, or local level which has jurisdiction over (1) the Design-Build Contract, Project, Facility, or Project Site, (2) any Work or services performed or provided under the Design-Build Contract, (3) any Sub-Project, or (4) any Party, Contractor, Subcontractor, Supplier, or the Project Architect.

qq. **RESERVED**

rr. **Hazardous Materials** means: (i) any substance, emission, or material including, without limitation, asbestos, now or hereafter defined as, listed as or specified in an Environmental Law as a “regulated substance,” “hazardous substance,” “toxic substance,” “pesticide,” “hazardous waste,” “hazardous material” or any similar or like classification or categorization under any Environmental Law, including by reason of ignitability, corrosivity, reactivity, carcinogenicity, or reproductive or other toxicity of any kind; (ii) any products or substances containing petroleum, asbestos, or polychlorinated biphenyls; or (iii) any substance, emission, or material determined to be hazardous or harmful.

ss. **Instruments of Service** means the work product of the Project Architects who are a part of the Design-Build Group.

tt. **Interim Change Authorization** means a County-generated document which authorizes Design-Builder to proceed with additional, altered, or modified Work before acceptance of a Change Order Proposal, when such additional, altered, or modified Work must proceed in order to prevent damage to Work in place, to prevent significant delay in the Project Schedule, or to maintain safety, or otherwise when determined to be in the best interest of County.

uu. **Modification** means and includes: (1) a written amendment to the Design-Build Contract signed by both Parties; (2) a Change Order, including a “Unilateral Change Order” (as defined in Section 10.16.2 of the Supplementary Conditions); or (3) a written order for a minor change in the Work issued by County that does not affect the Contract Time or the Stipulated Sum.

vv. **Notice to Proceed** means written notice to Design-Builder to begin its work under the Design-Build Contract pursuant to Article 3 of the Agreement.

ww. **Partial Release of Lien** has the meaning given such term in Section 5.16.4 of the Agreement.

xx. **Parties** mean, collectively, County and Design-Builder.

yy. **Party** means either County or Design-Builder.

zz. **Pay Application** has the meaning given such term in subsection 5.2.1 of the Agreement.
aaa. **Pre-Final Punchlist** means an inspection report prepared by design professionals and Design-Builder in connection with the Work on the Facility and for the Project, and may be modified by County representatives which details items not satisfactory as finished Work. Also, see Section 9.1.2, Supplementary Conditions.

bbb. **Prevailing Wage Rate Law** means the terms, provisions, and minimum wage rates contained in the “Prevailing Minimum Wage Rates Schedule for Building Construction Projects” published by the U.S. Department of Labor (a) for construction projects undertaken in Bexar County, Texas, and (b) that is in effect as of the Effective Date of the Agreement.

ccc. **Product Data** means and includes illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Design-Builder to illustrate materials or equipment for some portion of the Work.

ddd. **Project** means the design and construction services generally described in Section A.1.1, herein, and as well as the Work in connection with the Facility as described by the Design-Build Documents.

eee. **Project Architect** means the professional architect or engineer employed by Design-Builder via a direct contract in order to perform all or part of the Design Services for all, or a portion, of the Work in accordance with the Design-Build Documents. The Project Architect, as well as its professional consultants, must be both qualified to perform the Design Services and licensed in accordance with Chapter 1051, Texas Occupation Code, if an architect, or in accordance with Chapter 1001, Texas Occupations Code, if an engineer, and shall be the Architect of Record or Engineer of Record for the Project, whichever is more applicable. The term “Project Architect” also includes both Project Architect and its authorized representative. The Project Architect is referred to throughout the Design-Build Documents as if singular in number.

fff. **Project Criteria** means the character, scope, relationships, forms, size, and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements, or criteria, and major equipment layouts as presented in the solicitation design narrative and exhibits.

ggg. **Intentionally Blank**

hhh. **Project Schedule** means the schedule provided by Design-Builder to design and construct the Facility. The current version of the Project Schedule is attached as Exhibit B to the Agreement. The Project Schedule may be amended from time to time to address changes in durations and milestones, however, the date of Substantial Completion can only be changed pursuant to the terms of the Design-Build Contract.

iii. **Project Site** means the real property for the Facility and its immediately surrounding area indicated on the Drawings and encompassed by the Project and its staging areas.

jjj. **Proposals** means, collectively, Design-Builder’s separate responses to the RFQ and RFP.

kkk. **RFP** means the Final Request for Proposals (RFQ/P No. 1009 Dual Diagnosis Residential Facility (DDRF) Recovery Center Intake Building and Campus Renovations) issued by County on June 14, 2023 and any addenda thereto.
III. **RFO** means the Request for Qualifications and Preliminary Request for Proposals (RFQ/P-RFP No. 1009 Dual Diagnosis Residential Facility (DDRF) Recovery Center Intake Building and Campus Renovations) issued by County on March 10, 2023 and any addenda thereto.

**Samples** mean physical examples of materials, equipment, or workmanship which are representative of some portion of the Work that establish standards by which the Work will be judged.

**Schedule of Values** means the detailed breakdown of the cost necessary to accomplish the Work as described in the Design-Build Documents, submitted by Design-Builder for approval by County.

**Separate Contractor** has the meaning given such term in Section A.6.1.2.

**Shop Drawings** means drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data prepared by Design-Builder or any Subcontractor, manufacturer, Supplier, or distributor, which illustrate some portion of the Work.

**Specifications** mean the Project Architect’s work product which establishes the quality of the products and processes to be used to produce the Work.

**Stipulated Sum** has the meaning given such term in Section 4.2.1 of the Agreement.

**Subcontractor** means a person or entity that has a direct contract with Design-Builder to perform a portion of the design or construction required in connection with the Work at the Project Site. The term “Subcontractor” is referred to throughout the Design-Build Documents as if singular in number and includes both Subcontractor and any authorized representative of the Subcontractor.

**Substantial Completion** means, in addition to the criteria contained in Section 5.13.1 of the Agreement, the date jointly certified by Design-Builder and County which depicts when the Work, or a designated portion thereof, is (1) sufficiently complete in accordance with the Design-Build Documents, (2) functionally and fully operational in all its components, and (3) fit for the use for which it is intended, and for which a Certificate of Occupancy (final or temporary) has been issued.

**Substantial Completion Inspection** means an inspection conducted to determine that the Work associated with the Project, or a portion thereof, is substantially complete as defined in the Design-Build Contract and usable for its intended purposes. The Substantial Completion Inspection results in a pre-final Punchlist.

**Supplementary Conditions** means the provisions of Exhibit C to the Agreement that have been issued by County containing terms and conditions which relate, and are peculiar, to the Project. Supplementary Conditions, when used, are a part of the Design-Build Documents, and supersede the General Conditions to the extent of any inconsistency or conflict.

**Supplier** means a person or entity, other than the Project Architect, that has a contract with Design-Builder to furnish materials or rental/leased equipment in connection with the Work.

**Unconditional Partial Release of Lien** means a release that meets the requirements of Texas Property Code, Section 53.284(c), for progress payments and Texas Property Code, Section 53.284(e), for Final Payment.
yyy. Unilateral Change Order Agreed Change Order has the meaning given such term in Section 10.16.2 of the Supplementary Conditions.

zzz. Unit Price Work means Work to be paid for on the basis of unit prices.

aaaa. Work means the labor and materials necessary to complete the Facility by Design-Builder as contemplated under, and in accordance with, the terms, conditions, and provisions contained in the Design-Build Contract.

§A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§A.1.2.1 If Design-Builder believes that implementation of any instruction received from County would cause a violation of any applicable law, statute, ordinance, building code, rule, or regulation, Design-Builder shall promptly notify the County’s Designated Representative in writing. Neither Design-Builder nor any Contractor or the Project Architect shall be obligated to perform any act which they believe will violate any applicable law, statute, ordinance, code, rule, or regulation.

§A.1.2.2 Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, including specifically, but without limitation, the geotechnical investigation and reports and the environmental surveys and reports provided to Design-Builder by the County but not that such information complies with applicable laws, regulations, and codes, which shall be the obligation of Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations, and codes, Design-Builder shall furnish Work which complies with such laws, regulations, and codes. In such case, Design-Builder shall be excused from any obligation to comply with the Project Criteria that is inconsistent or conflicts with any applicable law, regulation, and code, and County shall issue a Change Order to Design-Builder unless Design-Builder recognized such non-compliance prior to execution of the Agreement and failed to notify County. Additionally, Design-Builder shall promptly notify County in writing if Design-Builder is aware of any deficiency or error in the information contained in the Project Criteria including, without limitation, any information contained in the environmental surveys and reports described above.

§A.1.3 CAPITALIZATION

§A.1.3.1 Terms capitalized in these Terms and Conditions include those which are: (a) specifically defined; (b) the titles of numbered articles and identified references to sections in the document; or (c) the titles of other documents published by the American Institute of Architects.

§A.1.4 INTERPRETATION

§A.1.4.1 In the interest of brevity, the Design-Build 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.

§A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.
§A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§A.1.5.1 The Design-Build Documents shall be signed by County and Design-Builder.

§A.1.5.1.1 Design-Builder shall fully acquaint itself with all existing conditions and limitations affecting the Work, solely on the basis of Design-Builder’s Project Site inspections, the Drawings and Specifications, and the soils tests delivered to Design-Builder. All dimensions and clearances necessary to perform the Work, as indicated on the Drawings and contained in the Specifications, shall be verified by Design-Builder at the Project Site, and Design-Builder shall report any discrepancies to the Project Architect for adjustment before any Work affected thereby is undertaken.

Prior to execution of the Agreement, Design-Builder represents and acknowledged that both itself and each Subcontractor also evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed including, without limitation:

a. the location, condition, layout, and nature of the surface conditions of the Project Site and surrounding areas;

b. location of State Archeological Landmarks, as identified by Texas Historical Commission and UTSA Center for Archeological Research;

c. generally prevailing climatic conditions;

d. anticipated labor supply and costs;

e. availability and cost of materials, tools, and equipment; and

f. other similar issues.

County assumes no responsibility or liability for the safety of the Project Site, and Design-Builder and all of its Subcontractors and Suppliers shall be responsible for providing a safe place for the performance of the Work. County shall not be required to make any adjustment in either the Stipulated Sum or the Contract Time in connection with any failure by Design-Builder or any of its Subcontractors or Suppliers to have complied with the requirements of this Section A.1.5.1.1. This provision shall not operate in derogation of Section A.4.1.4 of this Exhibit A.

§A.1.5.2 Execution of the Agreement by Design-Builder is a representation that Design-Builder has visited the Project Site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Design-Build Documents.

§A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§A.1.6.1 Drawings, specifications, and other documents, including those in electronic form, prepared by the Project Architect, Consultants, and other providers of professional services and furnished by Design-Builder shall be the joint property of County, Design-Builder, the Project Architect, the Consultants, and the other providers of professional services in connection with the Design-Build Contract. The foregoing materials may be used by County for additions, extensions,
modifications, construction, completion, repair, maintenance and remodeling of this Project or on other projects. Design-Build, Architect, Consultants and other providers of professional services may utilize any of the constituent parts of the foregoing materials on any other project, except for unique or distinctive architectural components or effects which taken independently, or in combination, would produce a project with substantially similar and distinctive features.

§A.1.6.2 If County utilizes such materials for any other project, or any addition, extension, modification, or remodeling of this Project and does not retain Design-Build, the Project Architect, or the Consultants for such work, then (i) County shall delete any and all references to Design-Build, the Project Architect, or the Consultants from all drawings and specifications or other design documents used for such other project, or any addition, extension, modification, or remodeling of this Project, and (ii) Design-Build, the Project Architect, and the Consultants shall be indemnified, released, and held harmless by the County from any and liability that arises out of the use of such materials for the addition, extension, modification, or remodeling but only if and to the extent that the County is legally permitted to do so under the Texas Constitution and applicable Texas law.

§A.1.6.3 Prior to any electronic exchange by the Parties of the Instruments of Service or any other documents or materials to be provided by one Party to the other, County and Design-Build shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents. Any CADD disks furnished by the Design-Build Group are for the convenience of County and they do not supersede or replace information contained on the record hard copies of the final Design-Build Documents provided by Design-Build. County recognizes that there are numerous factors which may result in errors or discrepancies in data on disc including, without limitation, translation errors resulting from differences in computer software, hardware and related equipment, disc malfunctions, and user error. Accordingly, the Design-Build Group has no responsibility for and shall have no liability on account of any such error or discrepancy once such CADD disks are loaded on equipment outside the offices of the member of the Design-Build Group that generated such CADD disks.

§A.1.6.4 If the Design-Build Contract is terminated for any reason other than the default of County, each of Design-Build’s design professionals, including the Project Architect, shall be contractually required to convey to County a non-exclusive license to use that design professional’s Instruments of Service for the completion, use, and maintenance of the Project, conditioned upon County’s written notice to the design professional of County’s assumption of Design-Build’s contractual duties and obligations to that design professional and payment to that design professional of all undisputed amounts due to that design professional and its consultants. Alternatively, County may hire a substitute design professional to complete the Design Services under the Agreement, with the substitute design professional having all of the rights and privileges of the original design professional. In the event a substitute design professional is hired by County, County shall require the substitute design professional to assume Design-Build’s contractual duties and obligations to Design-Build’s design professional, including payment to the design professional of all amounts due to that design professional and its consultants.

§A.1.6.5 Submission or distribution of Design-Build’s documents to meet official, applicable regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.
ARTICLE A.2  COUNTY

§A.2.1  GENERAL

§A.2.1.1  County is the governmental entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number and is the owner of the Project. The term "County" under the Design-Build Contract means County or County's authorized representative. County shall designate in writing a representative who shall have express authority to bind County with respect to all Project matters requiring County's approval or authorization. County shall render decisions in a timely manner and in accordance with the Project Schedule submitted to County.

§A.2.1.2  County shall furnish to Design-Builder, within fifteen (15) days after receipt of a written request, information necessary and relevant for Design-Builder 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 Project Site, and County's interest therein.

§A.2.2  INFORMATION AND SERVICES REQUIRED OF COUNTY

§A.2.2.1  Information or services required of County by the Design-Build Documents shall be furnished by County with reasonable promptness and in accordance with the schedule attached to the Agreement as Exhibit B. Any other information or services relevant to Design-Builder's performance of the Work under County's control shall be furnished by County after receipt from Design-Builder of a written request for such information or services, with reasonable promptness so as to not delay the Work.

§A.2.2.2  County shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by Design-Builder, describing physical characteristics, legal limitations, and utility locations for the Project Site, and a written legal description of the Project 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 Project 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.

§A.2.2.3  County shall provide, to the extent available to County and if not required by the Design-Build Documents to be provided by Design-Builder, the results and reports of prior tests, inspections, or investigations conducted for the Project involving structural or mechanical systems, chemical, air, and water pollution, hazardous materials, or environmental and subsurface conditions, information regarding the presence of pollutants at the Project Site, and Archeological Landmarks.

Design-Builder shall confirm from benchmarks provided by County the physical surface characteristics of the Project Site indicated on the Drawings and report discrepancies discovered to County for adjustment as soon as possible before beginning Work. No extra charges or compensation will be allowed for grade variation or discrepancies except by written agreement before construction begins. Initiation of Work shall indicate Design-Builder's verification of existing grade elevations and acceptance of existing Project Site surface characteristics. Design-
Builder also shall be responsible for the accuracy and maintenance of benchmark/control points confirmed and approved by Design-Builder throughout the construction process.

If applicable, Design-Builder shall bear sole responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with, Section 2166.303, Texas Government Code, and Subchapter C, Sections 756.021, et seq., Texas Health and Safety Code. On trench excavations in excess of five (5) feet in depth, Design-Builder, or the applicable Subcontractor, shall pay a qualified engineer, experienced in the engineering design and preparation of drawings and specifications for compliance with state requirements for trenching and shoring, to prepare and professionally seal detailed drawings and specifications directing Design-Builder in the safe execution of trenching and shoring.

§A.2.2.4 County may obtain independent review of Design-Builder’s design, construction, and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by County. Such independent review shall be undertaken at County’s expense in a timely manner and shall not delay the orderly progress of the Work.

§A.2.2.5 County shall reasonably cooperate with Design-Builder in securing any necessary building and other permits, licenses, and inspections.

County shall secure, and pay for, all necessary approvals, easements (including air rights), assessments, and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Design-Builder shall obtain the building permit and all other necessary permits, inspections and approvals. Design-Builder shall pay all fees for permits or inspections, except for "impact" and "front-footage" fees. County shall pay "impact" and "front-footage" fees, if any. Design-Builder shall also obtain all permits and approvals, and pay all fees and expenses, including engineering costs, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the U.S. Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project.

§A.2.2.6 The services, information, surveys, and reports required to be provided by County under Section A.2.2, herein, shall be furnished at County’s expense, and Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent that County advises Design-Builder to the contrary in writing. However, Design-Builder is responsible for performing due diligence in its interpretation of the information, surveys, and reports provided by County and for performing any additional tests, inspections, or services Design-Builder determines are prudent, at Design-Builder’s expense.

§A.2.2.7 If County observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, County shall give prompt written notice thereof to Design-Builder.

§A.2.2.8 County shall communicate through Design-Builder with persons or entities employed or retained by Design-Builder, unless otherwise directed by Design-Builder.

§A.2.2.9 County shall furnish the services of geotechnical engineers, archeologists, or other consultants, if not expressly required by the Design-Build Documents to be provided by Design-Builder, for subsoil, air, and water conditions when such services are deemed reasonably necessary by Design-Builder to properly carry out the design services provided by Design-Builder and the
Project Architect. Such services may include, without limitation, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations. Design-Builder shall be entitled to rely upon such reports and recommendations, except to the extent that Design-Builder has actual knowledge of any error in such reports. In such event, Design-Builder shall promptly notify County in writing of such errors.

§A.2.2.10 County shall promptly obtain easements, zoning variances, and legal authorizations regarding Project Site utilization where essential to the execution of County’s program.

§A.2.3 COUNTY REVIEW AND INSPECTION

§A.2.3.1 County shall review and approve, or take other appropriate action upon, Design-Builder’s submittals including, without limitation, design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. County’s action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of Design-Builder or separate contractors. 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 Design-Builder as required by the Design-Build Documents.

§A.2.3.2 Design-Builder shall submit to County, for County’s approval pursuant to Section A.2.3.1, above, any proposed changes or deviations to previously approved documents or submittals. County shall review each proposed change or deviation, and those changes or deviations will be subject to the procedures of the changes clause in the Supplementary Conditions, Article 11.

§A.2.3.3 Notwithstanding County’s responsibility under Section A.2.3.2, herein, County’s review and approval of Design-Builder’s documents or submittals shall not relieve Design-Builder of responsibility for compliance with the Design-Build Documents, unless: (a) Design-Builder has notified County, in writing, of the deviation prior to approval by County, or (b) County has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§A.2.3.4 County may visit the Project Site at any time in order to keep informed about the progress and quality of the portion of the Work completed. However, County shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Site visits by County shall not be construed to create an obligation on the part of County to make on-site inspections to check the quantity or quality of the Work. County shall neither have control over, or charge of, nor be responsible 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 Design-Builder’s rights and responsibilities under the Design-Build Documents, except as specifically provided for in Section A.3.3.7, below.

§A.2.3.5 County shall not be responsible for Design-Builder’s failure or refusal to perform the Work in accordance with the requirements of the Design-Build Documents. County shall not have control over or charge of, and will not be responsible for, acts or omissions of Design-Builder,
Project Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for Design-Builder.

§A.2.3.6 County may reject any Work that does not conform to the Design-Build Documents. Whenever County considers it necessary or advisable, County shall have authority to require inspection or testing of the Work in accordance with the Supplementary Conditions, Sections 8.1.1 and 8.1.3, whether or not such Work is fabricated, installed, or completed. However, neither this authority of County 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 County to Design-Builder, the Project Architect, Contractors, material and equipment Suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§A.2.3.7 County may appoint an on-site project representative to observe the Work and to have such other responsibilities as County and Design-Builder agree to in writing. County will appoint an in-house Construction Manager to be on-site to observe the Work and to have the responsibilities designated in writing by County’s Designated Representative, or his designee. County’s Construction Manager will be the primary contact for Design-Builder throughout the Project.

§A.2.3.8 County shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion.

§A.2.4 COUNTY’S RIGHT TO STOP WORK

§A.2.4.1 If Design-Builder fails or refuses to correct any Work which is not in accordance with the applicable requirements of the Design-Build Documents, as required by Section A.10.2, below, or persistently fails or refuses to carry out Work in accordance with the Design-Build Documents, and Design-Builder fails or refuses to commence to cure such default within seven (7) days following written notice thereof from County to Design-Builder, County may issue a written order to Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, the right of County to stop the Work shall not give rise to a duty on the part of County to exercise this right for the benefit of Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3, below.

§A.2.5 COUNTY’S RIGHT TO CARRY OUT THE WORK

§A.2.5.1 If Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a consecutive seven (7) day period after receipt of written notice from County to commence and continue correction of such default or neglect with diligence and promptness, County may after such seven (7) day period give Design-Builder a second written notice to correct such deficiencies within a three (3) business day period. If Design-Builder within such three (3) business day period after receipt of such second notice fails or refuses to commence and continue to correct any deficiencies, County may, without prejudice to other remedies County may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due Design-Builder the reasonable cost of correcting such deficiencies. If payments due Design-Builder under the Design-Build Contract are not sufficient to cover such amounts, Design-Builder shall pay the difference to County. No action permitted to be taken by County hereunder shall affect any of the other rights or remedies of County granted by the Agreement or by applicable law, or relieve Design-Builder from any consequences or liabilities arising from such deficiencies.
ARTICLE A.3  DESIGN-BUILDER

§A.3.1  GENERAL

§A.3.1.1  Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. Design-Builder may be an architect or other design professional, a construction contractor, or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term “Design-Builder” means Design-Builder or Design-Builder’s authorized representative. Design-Builder’s representative is authorized to act on Design-Builder’s behalf with respect to the Project.

§A.3.1.2  Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§A.3.2  DESIGN SERVICES AND RESPONSIBILITIES

§A.3.2.1  When applicable law requires that any Work or related services be performed by licensed professionals, Design-Builder shall provide that Work or those services through the performance of qualified persons or entities duly licensed to practice their professions in the State of Texas and the City of San Antonio, Texas. County understands and agrees that the Work and related services performed by the Project Architect and Design-Builder’s other design professionals and consultants are undertaken and performed in the sole interest of, and for the exclusive benefit of, Design-Builder.

§A.3.2.2  The agreements between Design-Builder and Project Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, regarding the Project, the Facility, or any Design-Build Document must be in writing. These agreements, including services and financial arrangements with respect to the Project, shall be promptly and fully disclosed to County upon County’s written request.

§A.3.2.3  Design-Builder shall be responsible to County for acts and omissions of Design-Builder’s employees, Project Architect, Contractors, Subcontractors, as well as their respective agents and employees, and other persons or entities, including the Project Architect and other design professionals, performing any portion of Design-Builder’s obligations under the Design-Build Documents.

§A.3.2.4  Design-Builder shall carefully study and compare the Design-Build Documents, materials, and other information provided by County pursuant to Section A.2.2, above, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the Project Site affecting the Work, and report promptly to County any errors, inconsistencies, or omissions discovered.

§A.3.2.5  Design-Builder shall provide to County, for County’s written approval, design documents sufficient to establish: (a) the size, quality, and character of the Project; (b) its architectural, structural, mechanical/HVAC, security, and electrical systems; and (c) the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be promptly disclosed to County in writing. The County’s approval shall be made in accordance with the Schedule attached to the Agreement as Exhibit B.
§A.3.2.6 Upon County’s written approval of the design documents submitted by Design-Builder, Design-Builder shall provide construction documents for review (in both hardcopy and digital format) and written approval by County. The County’s approval shall be made in accordance with the Schedule attached to the Agreement as Exhibit B. The construction documents shall set forth, in detail, the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings (including Drawings), specifications (including Specifications), and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

a. be consistent with the County-approved design documents;

b. provide information for the use of those in the building trades; and

c. include documents customarily required for regulatory agency approvals.

§A.3.2.7 Design-Builder shall meet with County representatives periodically in person in order to review progress of the design and construction documents.

§A.3.2.8 Upon County’s written approval of construction documents, Design-Builder, with the assistance of County, shall prepare and file documents required to obtain any necessary approvals of Governmental Authorities.

§A.3.2.9 Design-Builder shall obtain from each of Design-Builder’s professionals and promptly furnish to County any certifications with respect to the documents and services provided by such professionals:

a. that, to the best of their knowledge, information, and belief, the documents or services to which such certifications relate: (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate; (ii) comply with applicable, professional practice standards; and (iii) comply with applicable laws, ordinances, codes, rules, and regulations governing the design of the Project; and

b. that County and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§A.3.2.10 If County requests Design-Builder, the Project Architect, or Design-Builder’s other design professionals to execute certificates other than those required by Section A.3.2.9, herein, the proposed language of such certificates shall be submitted to Design-Builder for review and negotiation at least fourteen (14) days prior to the requested dates of execution. Neither Design-Builder, the Project Architect, nor such other design professionals shall be required to execute certificates that would require knowledge, services, or responsibilities beyond the scope of their respective agreements with County or Design-Builder.

§A.3.3 CONSTRUCTION

§A.3.3.1 Design-Builder shall not perform any construction-related Work prior to County’s review and written approval of the proposed construction documents. Design-Builder shall not perform any portion of the Work for which the Design-Build Documents require County’s review
of submittals, such as Shop Drawings, Product Data, and Samples, until County has approved of each submittal in writing. County shall make these reviews expeditiously as time is of the essence of the Design-Build Contract.

§A.3.3.2 The construction-related Work shall be in accordance with County-approved submittals, except that Design-Builder shall not be relieved of responsibility for any deviation from requirements of the Design-Build Documents by County’s approval of the design and construction documents or other submittals such as Shop Drawings, Product Data, and Samples unless Design-Builder has specifically informed County, in writing, of such deviation at the time of submittal, and: (a) County has given written approval to the specific deviation as a minor change in the Work; or (b) a Change Order or Construction Change Directive has been issued authorizing the deviation. Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, or Samples by County’s approval thereof.

§A.3.3.3 Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by County on previous submittals. In the absence of such written notice, County’s approval of a re-submission shall not apply to such revisions.

§A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials, or equipment, or when Design-Builder, in its discretion, provides such design services or certifications through a Contractor, Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional’s written approval. County shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, but Design-Builder shall not be relieved of liability if the services, certifications, or approvals performed by such design professionals are not in accordance with the applicable requirements of the construction documents.

§A.3.3.5 Design-Builder shall be solely responsible for, and have control over, all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Design-Build Documents.

§A.3.3.6 Design-Builder shall keep County regularly (at least weekly) and promptly informed, in writing, of the progress and quality of the Work.

§A.3.3.7 Design-Builder shall be responsible for the supervision and direction of the Work in accordance with approved local practices and customs of Design-Builder’s profession or business. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If Design-Builder determines that such means, methods, techniques, sequences, or procedures may not be safe, Design-Builder shall give timely, written notice to County identifying all problems, concerns, and deficiencies, and shall not proceed with that portion of the Work without further written instructions from County. If Design-Builder is then instructed by County to proceed with the required means, methods,
techniques, sequences, or procedures without acceptance of changes proposed by Design-Build, County shall be solely responsible for any resulting loss or damage.

§A.3.3.8 Design-Build shall be responsible for the inspection of all portions of any Work already performed in order to determine if such portions are in proper condition to receive subsequent Work.

§A.3.3.9 Design-Build shall employ a competent, full-time jobsite superintendent for the Project Site and Work, and necessary assistants at the Project Site who shall be in attendance at the Project Site during performance of the Work, as well as a Project Manager and assistant superintendent or field engineer to supplement the work of the full-time jobsite superintendent. The Project Manager shall represent Design-Build, and communications given to the Project Manager by County or the County Designated Representative shall be as binding as if given to Design-Build. All important, material, critical, and emergency communications shall be immediately confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The superintendent and Project Manager shall be satisfactory to County at all times between the Date of Commencement and Final Completion, and shall not be changed except with the written consent of County, unless the superintendent or Project Manager prove to be unsatisfactory to Design-Build or cease to be in his/her/its employ.

§A.3.4 LABOR AND MATERIALS

§A.3.4.1 Unless otherwise provided in the Design-Build Documents, Design-Build shall provide, or cause to be provided, and shall pay for all design services, labor, materials, equipment, tools, construction equipment, and machinery, water, heat, utilities, transportation, and other facilities and services which are necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§A.3.4.2 When a material is specified in the Design-Build Documents, Design-Build may make substitutions only with the prior, written consent of County and, if appropriate, in accordance with a Change Order, and Design-Build:

a. represents that Design-Build has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

b. represents that Design-Build will provide the same warranty for the substitution that Design-Build would for that specified;

c. certifies that the cost data presented is complete and includes all related costs under the Agreement except the Project Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

d. will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§A.3.4.3 Design-Build shall enforce strict discipline and good order among Design-Build's employees and other persons carrying out the Design-Build Contract. Design-Build shall not permit the employment or continued employment of unfit persons or persons who are not skilled in tasks assigned to them. All personnel used in the performance of the Work must be qualified to perform their assigned tasks. At the request of County, Design-Build shall not use,
or permit to be used, in the performance of the Work any personnel who are incompetent, careless, unqualified, or otherwise unsatisfactory to County in the exercise of reasonable judgment.

Design-Builder shall deliver a letter addressed to County certifying that no materials used in connection with the Work or Project contain any lead nor asbestos materials in excess of amounts allowed by any applicable local/state standards, laws, codes, rules and regulations, U.S. Environmental Protection Agency (EPA) standards and the federal Occupational Safety and Health Administration (OSHA) standards, whichever are most restrictive. Certification shall further state that should any lead or asbestos fibers be found in connection with any Work associated with the Facility or Project in concentrations greater than the amounts permitted by applicable law, rule, or regulation, that Design-Builder shall be responsible for determining which material(s) contain the lead or asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to County. Final Payment shall not be made until this letter of certification has been received.

§A.3.5 WARRANTY

§A.3.5.1 Design-Builder warrants to County that materials and equipment furnished under the Design-Build Documents will be of good quality and new, unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by applicable law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized in accordance with the applicable terms of the Design-Build Contract, may be considered defective. Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Design-Builder and which Design-Builder would not normally be aware, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage, or acts of God. If required by County, Design-Builder shall promptly furnish satisfactory evidence as to the kind and quality of materials and equipment.

Design-Builder will assign to County, or County’s designated representative, any manufacturers’, Suppliers’, and Subcontractors’ warranties on materials, equipment, and fixtures and labor incorporated in the Work required by the Design-Build Documents or that it otherwise obtains; provided however, that it will be entitled to enforce all such warranties until expiration of its obligations under this Section A.3.5. Design-Builder’s delivery to County of all warranty-guarantees required by the Specifications is required as prerequisite to the Final Payment. Design-Builder further agrees to perform the Work in such manner so as to preserve any and all such manufacturers’ warranties.

Except where otherwise stipulated in the Design-Build Documents, Design-Builder shall, as per the Agreement, warrant all materials and workmanship furnished under the Design-Build Contract for a period of one (1) year after the date of receipt of Substantial Completion of the Work, and shall promptly repair, and make good, without expense to County, any and all non-conformities in its Work of which it receives notice within that time.

All required warranties shall be submitted to County on approved forms as a condition of Final Payment.

Just prior to termination of the one (1) year warranty period, Design-Builder shall accompany County on an inspection tour of the Facility and shall note any non-conforming Work and start remedying these non-conformities within ten (10) days of the inspection tour. For extended
warranties required by various sections, i.e., roofing, compressors, mechanical equipment, etc., County will notify Design-Builder of deficiencies and Design-Builder shall start remedying these nonconformities within seven (7) days of initial notification from County if such notification is received within the one (1) year warranty period provided above, and in all other cases, County shall enforce such warranties directly against the applicable Subcontractor or Supplier. With respect to any defect notice of which is received by Design-Builder during the warranty period, Design-Builder shall prosecute the work without interruption until accepted by County, and County’s Designated Representative, even though such prosecution should extend beyond the limit of the warranty period.

Design-Builder shall not intentionally waive or take any action to prejudice or void any warranties as to materials or component parts used in the Work or as to any Subcontractor’s Work without County’s prior written consent.

In addition to the foregoing stipulations, Design-Builder and County shall comply with the warranties specified in Article 6 of the Supplementary Conditions referred to in any portion of the Design-Build Documents, and where warranties overlap; the more stringent requirement shall govern. If, for any reason, Design-Builder cannot warrant any part of the Work using materials or construction methods which have been specified, or shown, it shall promptly notify County and Project Architect, in writing, giving reasons, together with the name of product and data on substitution it can warrant. Under such circumstances, Design-Builder shall be responsible for promptly re-designing the Work at its sole cost and risk so that Design-Builder’s warranty will apply to such part of the Work and such re-design is pre-approved, in writing, by County.

§A.3.6 PERMITS, FEES AND NOTICES

§A.3.6.1 Design-Builder shall secure, and pay for, building and other permits and governmental fees, licenses, and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement and which were legally required on the date that County accepted Design-Builder’s Proposal. See Section A.2.2.5, above, for additional discussions on the permits, licenses, and fees that are the responsibility of County.

§A.3.6.2 Design-Builder shall comply with, and give, notices required by all applicable laws, ordinances, rules, regulations, and lawful orders of Governmental Authorities relating to the Project.

§A.3.6.3 It is Design-Builder’s responsibility to ascertain that the Work is performed, provided, or conducted in accordance with all applicable laws, ordinances, codes, rules, regulations, and lawful orders of Governmental Authorities.

§A.3.6.4 If Design-Builder performs, provides, or conducts any Work contrary to any applicable law, ordinance, code, rule, regulation, or lawful order of any Governmental Authority, Design-Builder shall assume responsibility for such Work and shall bear the costs and all risk of loss attributable to correction.

§A.3.7 {INTENTIONALLY OMITTED.}

§A.3.8 ALLOWANCES

§A.3.8.1 Design-Builder shall include in the Stipulated Sum all allowances (including Allowances) stated in the Design-Build Documents. Items covered by allowances (including
Allowances) shall be supplied for such amounts and by such persons or entities as County may
direct, but Design-Builder shall not be required to employ persons or entities to which Design-
Builder has reasonable objection.

§A.3.8.2 Unless otherwise provided in the Design-Build Documents:

a. allowances (including Allowances) shall cover the cost to Design-Builder of
materials and equipment delivered at the Project Site and all required taxes, less
applicable trade discounts;

b. Design-Builder's costs for unloading and handling at the Project Site, labor,
installation costs, overhead, profit, and other expenses contemplated for stated
allowance amounts shall be included in the Stipulated Sum, but not in the
allowances (including Allowances); and

c. whenever costs are more than, or less than, allowances (including Allowances),
the Stipulated Sum shall be adjusted accordingly by Change Order. The amount
of the Change Order shall reflect: (1) the difference between actual costs and such
allowances under Section A.3.8.2.a, herein; and (2) changes in Design-Builder's
costs under Section A.3.8.2.b, above.

§A.3.8.3 Materials and equipment under an allowance (including Allowance) shall be
selected by County in sufficient time to avoid delay in the Work.

§A.3.9 DESIGN--builder'S SCHEDULE

§A.3.9.1 The preliminary schedule for the Work is set out in the Project Schedule, being
Exhibit “B” to the Agreement. Design-Builder's Project Schedule shall be updated by Design-
Builder once the Design-Build Documents have been sufficiently developed to allow County and
Design-Builder to determine the Contract Time. The Project Schedule:

a. shall not exceed time limits and shall be in such detail as required under the
Design-Build Documents;

b. shall be revised at appropriate intervals as required by the conditions of the Work
and Project;

c. shall be related to the entire Project to the extent required by the Design-Build
Documents;

d. shall provide for expeditious and practicable execution of the Work; and

e. shall include allowances for periods of time required for County's review and for
approval of submissions by Governmental Authorities.

§A.3.9.2 Design-Builder shall prepare and keep current a schedule of submittals required
by the Design-Build Documents.

§A.3.9.3 Design-Builder shall perform the Work in general accordance with the most recent
schedules submitted to County.
Design-Builder shall update the Project Schedule on or before the first day of each calendar month through Final Completion to reflect any authorized changes in the Contract Time and shall provide the County with each updated Project Schedule and a chart showing the progress of each separate segment of the Work (including each Sub-Project, if any) and the new projected completion dates for each such segment and the entire Project. The allocation of time extensions authorized by the Design-Build Documents among different segments of the Work (including each Sub-Project, if any) in the Project Schedule shall be subject to the reasonable approval of County. The Project Schedule, at a minimum, shall specify whether the Project (including each Sub-Project, if any) is on schedule, and if not, the reasons therefor. Projected completion times in the updated Project Schedule shall not relieve Design-Builder from its obligation to complete the Project within the Contract Time established by the original Project Schedule, and only changes to the Project Schedule necessitated by authorized changes to the Contract Time shall cause a permanent revision to the Project Schedule. At a minimum, Design-Builder shall hold bi-weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to County. The progress of the Work shall be reported in detail with reference to the Project Schedule.

§A.3.10 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

§A.3.10.1 Design-Builder shall maintain at the Project Site for County at least one (1) record copy of the Drawings, Specifications, addenda, Change Orders, and other Modifications associated with the Project (including each Sub-Project, if applicable), in good order and marked currently to record all field changes and selections made during construction, and at least one (1) record copy of originally authorized and approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to County promptly after the completion of the Work.

§A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§A.3.11.1 Design-Builder, at County’s request and at no additional expense to County, shall provide County with Samples or mock-ups of any interior and exterior items requested by County in writing.

§A.3.11.2 Shop Drawings, Product Data, Samples, and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which Design-Builder proposes to conform to the Design-Build Documents. Design-Builder will, however, review with County and Project Architect a list of additional submittals that Design-Builder may want reviewed prior to execution of the Design-Build Documents.

§A.3.11.3 Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to County only those Shop Drawings, Product Data, Samples, and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of County or of separate contractors.

§A.3.11.4 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Design-Builder represents that Design-Builder has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.
§A.3.12 USE OF PROJECT SITE

§A.3.12.1 Design-Builder shall confine operations at the Project Site to the area(s) permitted by applicable law, ordinances, permits, and the Design-Build Documents, and shall not unreasonably encumber the Project Site with materials, machinery, vehicles, or equipment. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project Site by Design-Builder. After any material, vehicle, equipment, or machinery is no longer required for the Work, it shall be promptly removed from the Project Site. Protection of construction materials and equipment stored at the Project Site from weather, theft, damage, and all other adversity is solely the responsibility and risk of Design-Builder. Design-Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Project Site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project Site of the Work shall be free from all debris, building materials, machinery, vehicles, and equipment likely to cause hazardous conditions, and Design-Builder shall coordinate its Work through the County’s Designated Representative.

§A.3.13 CUTTING AND PATCHING

§A.3.13.1 Design-Builder shall be responsible for any cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§A.3.13.2 Design-Builder shall not damage or endanger a portion of the Work, or any fully or partially completed construction of County or separate Contractors, by cutting, patching, or otherwise altering such construction or by excavation. Design-Builder shall not cut or otherwise alter such construction by County or a separate Contractor, except with the prior written consent of both County and such separate Contractor, such consent not to be unreasonably withheld. Design-Builder shall not unreasonably withhold from either County or any such Contractor, Design-Builder’s consent to cutting or otherwise altering the Work.

§A.3.14 CLEANING UP

§A.3.14.1 Design-Builder shall keep the premises (including the Facility and Project Site) and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. Upon the completion of the Work, Design-Builder shall promptly remove from, and about, the Facility and Project Site all waste materials, rubbish, Design-Builder’s tools, construction equipment, machinery, and surplus materials.

§A.3.14.2 If Design-Builder fails to clean up as provided in the Design-Build Documents, County may do so and the Design-Builder shall promptly reimburse County for such expense.

§A.3.14.3 Design-Builder shall be responsible for any damaged or broken glass in connection with any Work, and, at completion of the Work, shall promptly replace such damaged or broken glass at its sole cost and risk. Design-Builder shall perform the following final cleaning prior to Substantial Completion of each portion of the Work as delivered to County prior to Final Completion of the Project:

a. Remove all temporary protections;

b. Remove marks, stains, fingerprints, and other soil or dirt from all surfaces and other Work;
c. Remove spots, mortar, plaster, soil, and paint from ceramic tile, marble, and other finish materials from all surfaces and other Work;

d. Clean fixtures, cabinet work, and equipment, removing stains, paint, dirt, and dust, and leave in an undamaged and new condition; and

e. Clean all surfaces and other Work in accordance with recommendations of the applicable manufacturer(s).

§A.3.15 ACCESS TO WORK

§A.3.15.1 Design-Builder shall provide County, as well as County’s elected officials and other designated representatives, separate Contractors, and agents, with access to the Work in preparation and progress, wherever located.

§A.3.16 INTENTIONALLY OMITTED

§A.3.17 INTENTIONALLY OMITTED

§A.3.18 SERVICE/MAINTENANCE INSTRUCTIONS

§A.3.18.1 Design-Builder shall supply all printed service and maintenance instructions issued by the manufacturer on each item of equipment furnished under the Agreement, promptly delivering same to County prior to, and as a condition precedent for, receiving Final Payment. Design-Builder shall instruct County in the proper use, maintenance, and emergency repair of all mechanical systems or equipment at the time of Substantial Completion and before final acceptance of the Project by County. Design-Builder shall call particular attention to safety measures that should be followed during operation of any such mechanical systems or equipment.

ARTICLE A.4 DISPUTE RESOLUTION

§A.4.1 CLAIMS AND DISPUTES

§A.4.1.1 Definition. A “Claim”, as that term is used in the Design-Build Documents, is a demand or assertion by one (1) of the Parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Design-Build Contract. The term “Claim” also includes other disputes and matters in question between County and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice in accordance with the terms of this Article A.4. The responsibility to substantiate a Claim shall rest with the Party making the Claim.

§A.4.1.2 Time Limits on Claims. Claims by either Party must be initiated within 12 months after occurrence of the event giving rise to such Claim or within 12 months after the claimant first recognizes or becomes aware of the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other Party; provided, however, that the claimant shall use best efforts in order to furnish the other Party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall reasonably cooperate with the Party against whom the Claim is made in any effort to mitigate the alleged or potential injury, loss, cost, expense, damage, destruction,
delay, penalty, or other adverse consequences arising out of the condition that is the cause of such a Claim.

§A.4.1.3 **Continuing Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in the Agreement, as well as Article A.12 herein, Design-Builder shall proceed diligently with performance of the Design-Build Contract and County shall continue to make payments in accordance with the Design-Build Documents.

§A.4.1.4 **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the Project Site which are: (a) subsurface or otherwise concealed, physical conditions which differ materially from those indicated in the Design-Build Documents or the Project Criteria; or (b) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing Party shall give written notice to the other Party promptly before such conditions are disturbed and in no event later than five (5) Calendar Days after first observance of the conditions. County shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in Design-Builder’s cost of, or time required for, performance of any part of the Work, shall negotiate with Design-Builder an equitable adjustment in the Stipulated Sum or Contract Time, or both. If County determines that the conditions at the Project Site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, County shall so notify Design-Builder in writing, stating the reasons. Claims by Design-Builder in opposition to such determination must be made within twenty-one (21) Calendar Days after County has given notice of the decision. If the conditions encountered are materially different, the Stipulated Sum and Contract Time shall be equitably adjusted, but if County and Design-Builder cannot agree on an adjustment in the Stipulated Sum or Contract Time, the adjustment shall proceed and be resolved pursuant to Article A.4.2., below.

§A.4.1.5 **Claims for Additional Cost.** If Design-Builder wishes to make a Claim for an increase in the Stipulated Sum, written notice as provided herein shall be given to County before proceeding to execute or continue with that portion of the Work associated with the Claim or additional cost. Prior notice is not required for any Claim for additional cost relating to an emergency endangering life or property.

§A.4.1.6 If Design-Builder believes additional cost, or an increase in the Contract Time under Section A.4.1.7.2, below, is involved for reasons including, without limitation:

a. an order by County to stop the Work where Design-Builder was not at fault;

b. a written order for the Work issued by County;

c. failure of payment by County of an undisputed amount;

d. termination of the Design-Build Contract by County;

e. County’s suspension of the Work; or

f. other reasonable grounds outside the control of Design-Builder;

a Claim shall be filed in accordance with this Article A.4.1.
§A.4.1.7 Claims for Additional Time

§A.4.1.7.1 If Design-Builder wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one (1) Claim submission is necessary. Any commencement of Work after a delay will serve to terminate that delay for purpose of the applicable notice. Subsequent delays, whether of similar or a different nature and whether based on the same, similar or a different cause, shall require a separate, written notice.

§A.4.1.7.2 If adverse weather conditions ("Adverse Weather Conditions") are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were adverse for the period of time, as described in Articles 5 and 6 of the General Conditions; could not have been reasonably anticipated; and had an adverse effect on the scheduled construction.

If a delay is caused by County's interference with Design-Builder's performance of the Work or failure to issue timely approvals of submittals provided by Design-Builder in accordance with the Design-Build Contract (to the extent that such interference or failure continues after Design-Builder's written notice to County of the same) or if Design-Builder is delayed at any time in the progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, Adverse Weather Conditions, unavoidable casualties, or any causes beyond Design-Builder's reasonable control (but not caused by its negligence or willful failure or misconduct), or by delay authorized by County pending a resolution of the dispute, then the Contract Time shall be extended for a period equal to the length of the delay caused by the County's interference or other causes enumerated in this Section A4.1.7.2, and Design-Builder shall be entitled to recover additional costs as provided in Section A7.2.3; provided, however, that if Design-Builder fails to so notify County in writing within twenty-one (21) days after Design-Builder first becomes aware of such interference (except for claimed weather delays as hereinafter provided), then Design-Builder shall be deemed to have waived its rights to extend the Contract Time pursuant to this Section A4.1.7.2. Any of the following actions by County shall not constitute interference with Design-Builder's performance of the Work authorizing an extension of the Contract Time or other remedy:

a. County's lawful exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work; or

b. County's early occupancy of the Facility pursuant to the Agreement in and of itself, but if such occupancy interferes with Design-Builder's Work following written notice thereof from Design-Builder, then County's failure to abate the situation causing such interference within twenty-four (24) hours following such notice shall constitute interference potentially authorizing an extension of the Contract Time or other remedy.

Design-Builder shall submit any Claim for an extension of the Contract Time due to Adverse Weather Conditions to County in accordance with Section 5 of Exhibit D to the Agreement, entitled "General Conditions".

§A.4.1.8 Injury or Damage to Person or Property. If either Party to the Design-Build Contract suffers (a) any injury to, or death of, any person, (b) or damage to, or loss or destruction
of, any property, because of an act or omission of the other Party or of others for whose acts such Party is legally responsible, written notice of such injury, death, damage, loss, or destruction, whether or not insured, shall be given to the other Party within a reasonable time, but not exceeding twenty-one (21) days after the discovery of such. The notice shall provide sufficient detail to enable the other Party to investigate the matter.

§A.4.1.9 If the enactment or revision of any applicable code, law, or regulation, or official interpretations thereof, which govern or are otherwise applicable to the Project cause an increase or decrease of Design-Build's cost of, or time required for, performance of the Work, Design-Build shall be entitled to an equitable adjustment in Stipulated Sum or Contract Time. If County and Design-Build cannot agree upon an adjustment in the Stipulated Sum or Contract Time, Design-Build shall submit a Claim pursuant to Article A.4.1.

§A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§A.4.2.1 Except for those Claims arising under Article A.10.3, below, County shall provide an initial decision. An initial decision by County shall be required as a condition precedent to mediation of all Claims between County and Design-Build arising prior to the date Final Payment is due, unless thirty (30) days have passed after the Claim has been referred to County, with no decision having been rendered by County.

§A.4.2.2 The initial decision pursuant to Section A.4.2.1 and this Section A.4.2.2, herein, shall be in writing, shall state the reasons therefore, and shall notify the Parties of any change in the Stipulated Sum or Contract Time or both. The initial decision shall be subject first to mediation under Article A.4.3 and thereafter to such other applicable and available remedies as are set out in the Design-Build Documents.

§A.4.2.3 In the event of a Claim against Design-Build arising in connection with any Work, the Project, or the Design-Build Contract, County may, but is not obligated to, notify the surety of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Build's default, County may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§A.4.2.4 If a Claim arising in connection with any Work, the Project, or the Design-Build Contract 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 prior to initial resolution of the Claim.

§A.4.3 MEDIATION

§A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections 5.15.7 and 5.15.10 of the Agreement, shall, after initial decision of the Claim or thirty (30) days after submission of the Claim for initial decision, whichever is sooner, be subject to mediation as a condition precedent to the institution of legal or equitable or other proceedings by either Party.

§A.4.3.2 The Parties shall endeavor to resolve their Claims by mediation. Request for mediation shall be filed in writing with the other Party to the Design-Build Contract. Mediation shall proceed in advance of other legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the Parties or applicable court order.
§A.4.3.3 The Parties shall share and pay the mediator’s fee and any filing fees equally (i.e., on a 50/50 basis), regardless of the outcome of the mediation. The mediation shall be held in San Antonio, Texas. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§A.4.4 LITIGATION

§A.4.4.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections 5.15.7 and 5.15.10 of the Agreement, shall, sixty (60) days after submission of the Claim for mediation, be subject to litigation.

ARTICLE A.5 AWARD OF CONTRACTS

§A.5.1 Unless otherwise stated in the Design-Build Documents, or the Proposal requirements, Design-Build, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to County the full legal names of additional persons or entities, as well as their respective business address(es), and occupation/profession/trade relevant to the Work, which were not originally included in Design-Build's Proposal, or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design), proposed for each principal portion of the Work. County will promptly reply to Design-Build, in writing, stating whether or not County has any reasonable objection to any such proposed additional person or entity. Failure of County to reply promptly shall constitute notice of no reasonable objection.

§A.5.2 Design-Build shall not contract with a proposed person or entity to serve as a Contractor, Subcontractor, or Supplier or otherwise perform any Work in connection with the Project to which County has made reasonable and timely objection. Design-Build shall not be required by County to contract with anyone to whom Design-Build has made reasonable objection.

§A.5.3 If County has made a reasonable objection to a person or entity to serve as a Contractor, Subcontractor, or Supplier or otherwise perform any Work in connection with the Project proposed by Design-Build, Design-Build shall propose another to whom County has no reasonable objection. If the originally proposed party was competent and capable of performing the work, the County shall be responsible for any additional costs incurred by Design-Build in selecting another party, including the any additional costs to perform the same scope of work.

§A.5.4 Design-Build shall not change a person or entity previously selected to serve as a Contractor, Subcontractor, or Supplier or otherwise perform any Work in connection with the Project if County makes reasonable objection to such substitute.

§A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§A.5.5.1 Each agreement for a portion of the Work is assigned by Design-Build to County, provided that:

a. the assignment is effective only after termination of the Design-Build Contract by County for cause pursuant to Section A.12.2, below, and only for those agreements which County accepts by notifying the affected Contractor in writing;

b. the assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract; and
c. the assignment of Design-Builder’s contracts with the Project Architect and Consultants may be effected upon the termination of the Agreement for County’s convenience.

The Design-Build Contract is for County’s benefit, its successors and assigns; who as well as Design-Builder, may directly enforce all rights and warranties either express or implied herein, but Contractor(s) and Subcontractors shall have recourse only against Design-Builder and not against County, unless the contingent assignment pursuant to this Section A.5.5.1 is accepted in writing by the Bexar County Commissioners Court. To effect such purpose, Design-Builder now assigns to County all right to bring any actions against Contractor, Subcontractors, and material vendors without waiver by County of its right against Design-Builder because of defaults, delays, and defects for which a Contractor, Subcontractor, or material vendor may also be liable; provided, however, County shall not have the right to bring such actions directly against such Contractor or Subcontractor unless Design-Builder has defaulted hereunder (and such default remains uncured) or County has terminated the Design-Build Contract.

§A.5.5.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Contractor’s compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE A.6 CONSTRUCTION BY COUNTY OR BY SEPARATE CONTRACTORS

§A.6.1 COUNTY’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§A.6.1.1 Notwithstanding the provisions set forth in Section A.2.5, herein, County reserves the right to perform construction or operations related to the Project with County’s own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site. Under such circumstances, Design-Builder shall cooperate with County and separate contractors (as defined in Section A.6.1.2, herein) whose work might interfere with Design-Builder’s Work. If Design-Builder claims that delay or additional cost is involved because of such action by County, Design-Builder shall make such Claim as provided in Section A.4.1, herein.

§A.6.1.2 The term “separate contractor” shall mean any contractor retained by County pursuant to Section A.6.1.1, above.

§A.6.1.3 County shall provide for coordination of the activities of County’s own forces and of each separate contractor with the Work of Design-Builder, who shall cooperate with them. Design-Builder shall participate with other separate contractors and County in reviewing their construction schedules when directed to do so. Design-Builder shall make any revisions to the Project Schedule deemed necessary after a joint review with, and mutual agreement of, County. The construction schedules shall then constitute the Project Schedule to be used by Design-Builder, separate contractors, and County until subsequently revised. If the date of Substantial Completion must be extended to accomplish these revisions, Design-Builder shall be entitled to additional Contract Time pursuant to Article 4.1.7 of the Agreement.

Design-Builder accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Design-Build Documents. Design-Builder shall be responsible for such pre-purchased items, if any, as if Design-Builder were the original purchaser, provided such purchase orders and other agreements for procurement can be assigned to Design-Builder and Design-Builder is entitled to the enforcement.
of such purchase orders and agreements. The Contract Price includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Design-Build Documents shall also apply to any pre-purchased items, unless the Design-Build Documents specifically provide otherwise, provided such purchase orders and other agreements for procurement of pre-purchased items can be assigned to Design-Build and Design-Builder is entitled to the enforcement of such purchase orders and agreements.

§A.6.2 MUTUAL RESPONSIBILITY

§A.6.2.1 Design-Builder shall afford County and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities within the Project, and shall connect and coordinate Design-Builder’s construction and operations with theirs as required by the Design-Build Documents.

§A.6.2.2 If part of Design-Builder’s Work depends for proper execution or results upon design, construction, or operations by County, or a separate contractor, Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to County apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Design-Builder so to report shall constitute an acknowledgment that County’s, or separate contractor’s, completed or partially completed construction is fit and proper to receive Design-Builder’s Work, except as to defects not then reasonably discoverable.

§A.6.2.3 County shall be promptly reimbursed by Design-Builder for costs incurred by County which are payable to a separate contractor because of unreasonable delays, improperly-timed activities, or defective construction or Work of Design-Builder. County shall be responsible to Design-Builder for costs incurred by Design-Builder because of unreasonable delays, improperly-timed activities, damage to the Work, or defective construction by a separate contractor.

§A.6.2.4 Design-Builder shall promptly remedy any loss, damage, or destruction wrongfully caused by Design-Builder to completed, or partially completed, construction or to property of County or separate contractors.

§A.6.2.5 Should the County perform construction or operations as contemplated under Article A.6.1, herein, due to Design-Builder’s failure or refusal to do so, County, and each separate contractor, shall have the same responsibilities for cutting and patching as are described in Section A.3.13, herein.

§A.6.3 COUNTY’S RIGHT TO CLEAN UP

§A.6.3.1 If a dispute arises among Design-Builder, separate contractors, and County as to the responsibility under their respective contracts for maintaining the Facility or Project Site and surrounding area free from waste materials and rubbish, County may clean up and County shall allocate the cost among those responsible, its decision being final and binding on all interested persons and entities.

ARTICLE A.7 TIME

§A.7.1 PROGRESS AND COMPLETION
§A.7.1.1 Design-Builder shall not knowingly, except by agreement or instruction of County, in writing in advance, prematurely commence construction operations on the Project Site or elsewhere prior to the effective date of insurance required by Article A.11, herein, to be furnished by Design-Builder to County. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§A.7.1.2 Design-Builder shall then proceed expeditiously with adequate forces to complete all Work, and shall achieve Substantial Completion, within the Contract Time.

§A.7.2 DELAYS AND EXTENSIONS OF TIME

§A.7.2.1 Design-Builder shall furnish a baseline schedule to the County’s Designated Representative within ten (10) Calendar Days after the end of each calendar month showing the current status of the Project, any schedule updates and schedule impact during each preceding calendar month. Such action shall become final and binding upon Design-Builder unless Design-Builder’s designated representative notifies County’s Designated Representative, in writing, by the seventeenth (17th) day following such calendar month of any discrepancies claimed by Design-Builder.

§A.7.2.2 Claims relating to time shall be made in accordance with applicable provisions of Sections A.4.1.6 and A.4.1.7, above.

§A.7.2.3 Notwithstanding anything to the contrary in the Design-Build Documents, Design-Builder’s sole remedy for any:

a. delay in the commencement, prosecution, or completion of the Work;

b. hindrance or obstruction in the performance of the Work;

c. loss of productivity; or

d. other similar claims,

(collectively referred to in this Section A.7.2.3 as “Delays”), whether or not such Delays are foreseeable, shall be (1) an extension of time in which to complete the Work if permitted under Section A.7.2.1, above, and an adjustment to the Stipulated Sum (including any additional costs resulting under Section 7.2.1, herein), and (2) an adjustment to the Stipulated Sum (including any additional costs resulting therefrom), if (A) the Delay is caused by County or County’s separate contractors after written notice of such Delay and County’s failure to cause such Delay to stop within five (5) Calendar Days thereafter, or (B) the Design-Build Documents elsewhere expressly provide that Design-Builder is entitled to an adjustment to the Contract Sum. In no event shall Design-Builder be entitled to any other compensation or recovery of any losses, costs, or damages under or pursuant to this Section A.7.2.3 in connection with any Delay including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

ARTICLE A.8 PROTECTION OF PERSONS AND PROPERTY

§A.8.1 SAFETY PRECAUTIONS AND PROGRAMS

§A.8.1.1 Unless otherwise specified in the Specifications and/or Design-Build Documents, Design-Builder shall be responsible (with Contractors and Subcontractors being responsible to
Design-Builder) for initiating, maintaining, supervising, and enforcing all applicable safety precautions and programs in connection with their respective portions of the Work. It shall be the duty and responsibility of Design-Builder and its Contractor(s), including all of its Subcontractors, to be familiar and comply with all applicable requirements of Public Law 91-596, 29 U.S.C. §§ 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA), and all amendments thereto, and to enforce and comply with all of the provisions of such Act. Design-Builder shall comply with all applicable laws and regulations of any Government Authority for the safety of persons or property to protect them from damage, loss, destruction, injury, or death, and shall erect and maintain all necessary safeguards for such safety and protection, including preventing foreseeable bodily injury or death to persons due to hazardous materials on the Project Site as set forth in Section A.8.3, below.

§A.8.1.2. Design-Builder shall establish an on-site Safety Program which includes periodic inspections by Design-Builder’s Safety Officer. Design-Builder shall comply with all applicable safety criteria and standards which have been implemented by Government Authorities. This includes providing training, notifications, safety gear, and inspections of equipment and review of procedures. All applicable Material Safety Data Sheets (“MSDS”) will be posted in a place that is accessible to all workers on the Project Site, along with notification of the appropriate procedures for reporting safety hazards. When it is determined by Design-Builder that a hazard exists, that hazard will be corrected immediately and all workers on-site will be removed or protected from the hazard until it is corrected.

§A.8.1.3 Design-Builder shall notify County, in writing, of any adjacent property, facilities, and utilities in connection with the prosecution of the Work which may materially and adversely affect them (including their employees, agents, and representatives, as well as the Contractors, Subcontractors, Project Architect, Supplier, and their respective employees, agents, and representatives) or their facilities, and Design-Builder shall cooperate with County in the protection, removal, relocation, and replacement of their facilities and/or utilities.

§A.8.1.4 Design-Builder shall not allow any employee, Contractor, Subcontractor, or Supplier to carry a weapon on the Project Site, regardless of whether the individual has a concealed handgun license. If Design-Builder desires to have its security contactor for the Project Site carry a weapon (handgun), Design-Builder shall obtain the prior written consent from County’s Designated Representative; however, County shall have sole discretion to allow Design-Builder’s security contractor to carry a weapon on the Project Site.

§A.8.2 SAFETY OF PERSONS AND PROPERTY

§A.8.2.1 Design-Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent injury, death, damage, loss, or destruction, whichever is most applicable, to:

a. any employees or other individuals performing any Work, and other persons who may be affected thereby;

b. the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site or under the care, custody, or control of Design-Builder or any of Design-Builder’s Contractors or Subcontractors; and
c. other property at the Project 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.

§A.8.2.2 Design-Builder shall be responsible for coordinating the exchange of Material Safety Data Sheets (MSDSs) or other hazard communication information required to be made available to or exchanged between or among all employers at the Project Site in connection with applicable laws and regulations.

§A.8.2.3 Design-Builder shall maintain, as required by existing conditions and performance of the Design-Build Documents, adequate flagmen, barricades, warning signs, and lights for the Project within the location in which the Work is being performed. All stockpiles associated with the Project or Project Site shall be adequately barricaded and lighted. When it is necessary for County to provide barricades, warning signs, and/or lighting surrounding the Project Site and adjacent property for adequate public safety, Design-Builder will be charged for all costs incurred by County attributable to the Project.

§A.8.2.4 When the use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, Design-Builder shall exercise utmost care and carry on such activities only under the supervision of properly qualified personnel.

§A.8.2.5 Design-Builder shall promptly remedy any damage, loss, or destruction (other than any damage, loss, or destruction insured under property insurance required by the Design-Build Documents) to property which is or are caused, in whole or in part, by Design-Builder, the Project Architect, a Contractor, a Subcontractor, or anyone either directly or indirectly employed or retained by any of them or by anyone for whose acts they may be liable and for which Design-Builder is responsible, above, except damage, destruction, or loss attributable to acts or omissions of County or anyone directly or indirectly employed by County or by anyone for whose acts County may be liable, and not attributable to the fault or negligence of Design-Builder, Project Architect, or any Contractor, Subcontractor, Supplier, or anyone either directly or indirectly employed or retained by any of them. The foregoing obligations of Design-Builder are in addition to Design-Builder’s obligations under Section A.3.17, herein.

§A.8.2.6 Promptly after the signing of the Agreement, Design-Builder shall designate, in writing, to County a responsible individual whose duty shall be the prevention of accidents at or within the Project Site.

§A.8.2.7 Design-Builder shall not load, or permit any part of the construction or Project Site to be loaded, with any material, equipment, machinery, supplies, tools, vehicles, etc., so as to endanger its safety or any individual working at, inspecting, or visiting such location.

§A.8.2.8 Design-Builder shall have full responsibility for preventing the overstress of any structure, or any part or member of it, during construction. Design-Builder shall routinely and fully check the effect of its operations in this regard, and shall immediately provide all temporary support and connections required.

§A.8.2.9 If the Project requires excavation which exceeds a depth of five (5) feet below the subsurface, Design-Builder will develop and implement a trenching plan approved and sealed by a professional engineer licensed in the State of Texas and employed by Design-Builder.
§A.8.3  HAZARDOUS MATERIALS

§A.8.3.1  If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance including, but not limited to, asbestos or polychlorinated biphenyl (PCB), encountered on the Project Site by Design-Build, Design-Build shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to County.

§A.8.3.2  In response to the provisions contained in Section A.8.3.1, above, County shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Design-Build and, in the event such material or substance is found to be present, to verify that it has been rendered harmless (as that phrase is defined in this Section A.8.3.2). Unless otherwise required by the Design-Build Documents, County shall furnish, in writing, to Design-Build the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. Design-Build shall promptly reply to County, in writing, stating whether or not Design-Build has reasonable objection to the persons or entities proposed by County. If Design-Build has an objection to a person or entity proposed by County, County shall propose another to whom Design-Build has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of County and Design-Build. The Contract Time shall be extended appropriately, and the Stipulated Sum shall be increased in the amount of Design-Build’s reasonable additional costs of shutdown, delay, and start-up, which adjustments shall be accomplished as provided in Sections 11.11 and 11.12 of the Supplementary Conditions (see Exhibit C to the Agreement). The term “rendered harmless” shall be interpreted in this Article A.8 to mean that levels of such materials or substances, including asbestos and polychlorinated biphenyls, are:

a. less than any applicable exposure standards set forth in OSHA regulations, and

b. are less than would trigger any special permitting, handling, transportation, storage, or disposal under applicable law.

Subject to Section A.8.3.3 below, County shall have no responsibility for any substance or material that is brought to the Project Site by Design-Build, any Subcontractor, any material Supplier, or any entity for which any of them is responsible. Design-Build agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§A.8.3.3  County shall not be responsible under this Section A.8.3 for materials and substances brought to the Project Site by Design-Build, unless such materials or substances were required by the Design-Build Documents.

§A.8.4  EMERGENCIES

§A.8.4.1  In any emergency affecting the safety of persons or property, Design-Build shall act reasonably to prevent threatened damage, injury, or loss. Design-Build shall give County prompt written notice if Design-Build believes that any significant changes in the Work or variations from Design-Build Documents have been caused by its emergency response. Any additional compensation or extension of time claimed by Design-Build resulting from emergency work shall be considered. Authorized agents of Design-Build shall respond immediately to call-
out at any time of the day or night when circumstances warrant the presence of Design-Build to protect the Work or adjacent property from damage, restriction, or limitation, or to take such action pertaining to the Work as may be necessary to provide for the safety of the public. Should Design-Build fail to respond, County is authorized to direct other forces to take action as necessary and County may deduct any cost of remedial action from the funds due Design-Build under the Design-Build Contract.

§A.8.4.2 In the event of an incident or accident involving outside medical care or a lost time injury to an individual on or near the Work, Design-Build shall notify County as soon as possible, and in writing within twenty-four (24) hours of the event. Design-Build shall record the location of the event, the circumstances surrounding the event, use photography or other means to document the event, and gather witness statements or other documentation which describes the event. Design-Build shall supply County with incident investigation documentation no later than thirty-six (36) hours after the occurrence of the event. In the event of a catastrophic incident (one (1) fatality or three (3) workers hospitalized), the scene of the incident shall be barricaded and left intact until all investigations are completed.

§A.8.4.3 Additional compensation or extension of time claimed by Design-Build on account of an emergency shall be determined as provided in Section A.4.1.7, herein, provided Design-Build shall not be entitled to additional compensation or an extension of time if an emergency is caused by the negligence or willful misconduct of Design-Build, its Contractor, any Subcontractor, any Supplier, or anyone either directly or indirectly employed by any of them, or the failure of Design-Build to fulfill a specific responsibility of Design-Build to County set forth in the Design-Build Documents or the failure of Design-Build’s personnel to supervise adequately the Work of the Subcontractors or Suppliers.

ARTICLE A.9 INSURANCE AND BONDS

§A.9.1 Design-Build shall, at its sole expense, maintain in effect at all times during the full term of its Work under the Design-Build Documents (including, without limitation, any post acceptance warranty work of Design-Build or any Contractor or Subcontractor) and as otherwise required under the Design-Build Documents, insurance coverage with limits not less than those set forth in Section A.9.2, below. Insurance coverage shall be procured from insurers licensed to do business in the State of Texas, with a minimum acceptable A.M. Best Rating of A-VIII, acceptable to County, and under forms of policies satisfactory to County. None of the requirements contained in this Section A.9.1 as to types, limits or County’s approval of insurance coverage to be maintained by Design-Build is intended to, and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Design-Build under the Design-Build Documents or otherwise provided by law. In the event at any time any of the policies are canceled or not renewed, Design-Build shall provide to County a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of this Article A.9 and which provides for retroactive coverage to the date of cancellation or non-renewal to fill any gaps in coverage which may exist due to the cancellation or non-renewal of the policies. With respect to any "claims made" policies which are renewed, Design-Build shall provide coverage retroactive to the date of commencement of the Work in said renewed policy. All substitute or renewed "claims made" policies shall be maintained in full force and effect for the longer of: (1) three (3) years after the date of Final Completion of the Work; or (2) as otherwise required by the Design-Build Documents. A certificate evidencing continuation of such policies shall be submitted with the final Application for Payment. Nothing herein shall affect the continuing effect of the indemnity clauses in the Design-Build Documents.
§ A.9.2 SCHEDULE OF DESIGN-BUILDER'S INSURANCE COVERAGE

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Minimum Amounts and Limits</th>
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<tbody>
<tr>
<td>§ A.9.2.1 Workers’ Compensation and Employer’s Liability</td>
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</tr>
<tr>
<td>Workers’ Compensation</td>
<td>Statutory Limits</td>
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<tr>
<td>Employer's Liability</td>
<td>$500,000 each accident</td>
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</table>

The coverage set forth in this Section A.9.2 shall include all operations of Design-Builder. This coverage shall include a waiver of subrogation in favor of County.

§ A.9.2.2 Professional Liability Coverage

Professional Liability Errors and Omissions insurance of TWO MILLION DOLLARS ($2,000,000.00) each claim and FOUR MILLION DOLLARS ($4,000,000.00) aggregate.

a) Coverage shall be continuous (by renewal or extended reporting period) for no less than 60 months following completion of the Agreement and acceptance of the work by BEXAR COUNTY.

b) Coverage, including renewals, shall have the same retroactive date as the original policy applicable to this Agreement.

§ A.9.2.3 Commercial General Liability

Bodily Injury/Property Damage $1,000,000.00 each occurrence $2,000,000.00 aggregate applicable to the Project

This insurance shall be endorsed to include County as additional insured, state that this insurance is primary and non-contributory insurance as regards any insurance carried by County, with the commercial general liability additional insured endorsement. The commercial general liability insurance shall include the following coverages:

Premises/Operations;

Independent Design-Builders;

Completed Operations for a period of two (2) years following the acceptance of Design-Builder's Work;

Broad Form General Liability specifically in support of the Agreement;

Broad Form Property Damage;

Personal Injury Liability with employee and contractual exclusions removed; and

Delete Exclusions relative to Collapse, Explosion, Underground Property Damage Hazards, and Hostile Fire.
The coverage required in this Subparagraph A.9.2.3 shall cover Design-Builder and the Contractors and Subcontractors.

§ A.9.2.4 Commercial Automobile Liability

ONE MILLION DOLLARS ($1,000,000.00) Combined Single Limit

This policy shall be on a form acceptable to County, written to cover all owned, leased, borrowed, hired and non-owned automobiles and shall cover Design-Builder. The policy shall be endorsed to include County as additional insured, and state that this insurance is primary and non-contributory insurance as regards any insurance carried by County.

§ A.9.2.5 Umbrella Excess Liability Insurance

Bodily Injury/Property Damage $5,000,000.00 per occurrence

This policy shall be on a form acceptable to County, written on an umbrella/excess basis above coverages as described in Subparagraph A.9.2.5 above, endorsed to include County as an additional insured (County shall be named as Additional Insured on the policies required in Sections A.9.2.3 and A.9.2.4), and state that this insurance is primary insurance as regards any insurance carried by County. In addition, the policy shall be endorsed to provide defense coverage obligations in addition to the required limit of liability. The coverage required in this Section A.9.2.5 shall cover Design-Builder.

§ A.9.2.6 BUILDER’S RISK INSURANCE  Design-Builder shall carry, at its sole expense, completed value form builder’s risk property insurance (subject to a deductible per loss not to exceed FIFTY THOUSAND DOLLARS ($50,000.00) upon the entire Work, including without limitation, coverage for all County supplied materials, for one hundred percent (100%) of the full replacement cost value of such County supplied materials (100% includes additional costs of architectural and engineering services in the event of a loss). The policy shall be in the amount of the Stipulated Sum, plus the value of subsequent Design-Build Agreement modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the Site on a replacement cost basis, without optional deductibles.

This policy shall include the interests of County and Design-Builder in the Work as named insureds, as their interests may appear, and shall be on an "All Risk" basis for physical loss or damage resulting from, without limitation, fire, flood, earthquake, subsidence (excluding normal subsidence), hail, collapse, windstorm, theft, vandalism and malicious mischief. This policy shall also include coverage for portions of the Work while it is stored off the Site or is in transit. This policy shall further provide, by endorsement or otherwise, that Design-Builder shall be solely responsible for the payment of all premiums under the policy, and that County shall have no obligation for the premium payment, notwithstanding that County is a named insured under the policy. Such property insurance shall be maintained by Design-Builder until Final Payment has been made on the Project or until no person or entity, other than County, has an insurable interest in the property, whichever is later. Any insured loss or claim of loss shall be adjusted by the Insurance Carrier, and any settlement payments shall be made payable to County and Design-Builder as their interest may appear. Design-Builder shall be responsible for any loss, the value of which is within the deductible of the policy.

§A.9.2.7 PREMIUMS AND DEDUCTIBLES Design-Builder is responsible for all premiums and deductibles under all of the insurance policies required of it under this Article A.9.
§A.9.3 DESIGN-BUILDER’S EQUIPMENT  Any such insurance policy covering the equipment of Design-Builder or its Contractors and Subcontractors against loss by physical damage shall include an endorsement waiving the insurer’s right of subrogation against County. The insurance covering equipment shall be the sole and complete means of recovery for any loss of such equipment by Design-Builder or its Contractors and Subcontractors. Should Design-Builder or its Contractors and Subcontractors choose to self-insure the risk, it is expressly agreed that Design-Builder and its Contractors and Subcontractors hereby waive any claim for damage or loss to said equipment, in favor of County.

§A.9.4 EVIDENCE OF INSURANCE  Evidence of the insurance coverage required to be maintained by Design-Builder under Section A.9.1, represented by Certificates of Insurance and supporting policy evidence being the Schedule of Endorsements and a copy of the additional insureds endorsements issued by the insurance carriers, must be furnished to County, prior to execution of the Agreement by County. Certificates of Insurance shall specify the insured status mentioned above in Section A.9.1, as well as the waivers of subrogation. The Certificates of Insurance shall state that County will be notified in writing at least thirty (30) days prior to a cancellation, a material change to include being reissued to affect a change in the coverage, or non-renewal of insurance. All policies obtained or secured in accordance with this Article A.9 must not be subject to limitations, conditions, or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by Design-Builder in this Article A.9. With regard to the insurance coverage on which County, as well as its elected officials, employees, agents, and representatives are to be named as an additional insured, Design-Builder represents that the insurance policies maintained by Design-Builder during the Term of the Project will not contain any exclusion which would prevent County or any of its elected officials, employees, agents, or representatives from claiming under such policies as an additional insured. Design-Builder shall promptly provide to County a certified copy of any and all applicable insurance policies, upon request of County. Timely renewal certificates will be provided to County as the coverage of each policy renews. Copies of Design-Builder’s insurance policies required in this Article A.9, except for the Umbrella Excess Liability Insurance Policy, as well as copies of the policies of the Contractor(s) and first-tier Subcontractors, shall be made available for County’s review at Design-Builder’s office upon reasonable advance written notice by County to Design-Builder.

§A.9.5 CONTRACTORS’ AND SUBCONTRACTORS’ INSURANCE  Similar to that required of Design-Builder, including an endorsement by the insurance company of County, as well as its elected officials, employees, agents, and representatives, as Additional Insureds on the commercial general liability, business automobile liability, and commercial excess policies, with limits of liability, as set out in this Section A.9.5, shall be provided by or on behalf of all Contractors and Subcontractors to cover operations performed by such Contractors and Subcontractors under the Design-Build Documents. Design-Builder shall be held responsible for any modification in the insurance requirements of Section A.9.1, above, as they apply to such Contractors and Subcontractors. Design-Builder shall maintain Certificates of Insurance from all Contractors and Subcontractors, enumerating, among other things, the waivers in favor of, and insured status of, County, as required herein, and shall make such Certificates available to County in accordance with the time frame described in Section A.9.4. The term “Subcontractor(s)” for the purposes of this Section A.9.5 shall include subcontractors of any tier. As with Design-Builder’s insurance policies, Contractors’ and Subcontractors’ policies shall state their insurance is primary insurance as regards any insurance carried by County. The workers’ compensation, business automobile policy, commercial general liability and commercial excess policies provided by the Contractor and each Subcontractor will include a waiver of subrogation in favor of County.
### Minimum Insurance Requirements for Subcontractors

The Subcontractors shall maintain the following minimum coverage limits during the Project:

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<tr>
<th>Class</th>
<th>Trade Activity</th>
<th>Minimum Insurance Coverage Required</th>
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<tbody>
<tr>
<td>Class A</td>
<td>Surveyors</td>
<td>General Liability $1,000,000 per occurrence, $2,000,000 aggregate. County shall be named an additional insured on this policy.</td>
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<td><strong>Workers' Compensation - Statutory. Employer's Liability, $500,000 (per accident, illness, disease, aggregate). A waiver of subrogation in County's favor is required.</strong></td>
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<td><strong>Commercial Automobile Liability $1,000,000</strong> Combined single limit. County shall be named as an additional insured on this policy.</td>
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<td><strong>Professional Liability $1,000,000 per occurrence, $1,000,000 aggregate.</strong> A) Coverage shall be continuous (by renewal or extended reporting period) for no less than 60 months following completion of the Agreement and acceptance of the work by County. B) Coverage, including renewals, shall have the same retroactive date as the original policy applicable to this Agreement.</td>
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<td>Class B</td>
<td>Utilities</td>
<td>General Liability $1,000,000 per occurrence, $1,000,000 aggregate. County shall be named an additional insured on this policy.</td>
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<td>Excavation</td>
<td><strong>Workers' Compensation - Statutory. Employer's Liability, $500,000 (per accident, illness, disease, aggregate). A waiver of subrogation in County's favor is required.</strong></td>
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<td>Welding</td>
<td><strong>Commercial Automobile Liability $500,000 Combined single limit.</strong> <strong>For all EXCEPT concrete related work shall be $1,000,000 combined single limit. County shall be named as an additional insured on this policy.</strong></td>
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<td>Steel Erection</td>
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<td>Roofing</td>
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<td>Clearing &amp; Grading</td>
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<td>Plumbing</td>
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<td>Gas Distribution</td>
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<td>Demolition &amp; Blasting</td>
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<td>Concrete Foundations &amp; Slabs</td>
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<td>Masonry &amp; Stucco</td>
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<td>Pool &amp; Spa</td>
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<td>Concrete Curb &amp; Gutter</td>
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<td>Concrete Plumbing</td>
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<tr>
<td>Class</td>
<td>Trade Activity</td>
<td>Minimum Insurance Coverage Required</td>
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<td>Class C</td>
<td>Landscaping&lt;br&gt;Site Lighting&lt;br&gt;Paving&lt;br&gt;Gypcrete &amp; Ltwt Concrete&lt;br&gt;Sidewalks&lt;br&gt;Retaining Walls&lt;br&gt;Finish Carpentry&lt;br&gt;Insulation&lt;br&gt;Ceramic Tile&lt;br&gt;Fireplaces&lt;br&gt;Doors &amp; Windows</td>
<td><strong>General Liability</strong> $1,000,000 per occurrence, $1,000,000 aggregate. County shall be named an additional insured on this policy. &lt;br&gt;&lt;br&gt;<strong>Workers’ Compensation</strong> - Statutory. Employer’s Liability, $500,000 (per accident, illness, disease, aggregate). A waiver of subrogation in County’s favor is required. &lt;br&gt;&lt;br&gt;<strong>Commercial Automobile Liability</strong> $500,000 Combined single limit. County shall be named as an additional insured on this policy.</td>
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<td>Class D</td>
<td>Cleaning Service&lt;br&gt;Termite Control&lt;br&gt;Misc. Metals&lt;br&gt;Cabinetry&lt;br&gt;Waterproofing&lt;br&gt;Mirrors&lt;br&gt;Wallcovering&lt;br&gt;Floor Covering&lt;br&gt;Trash Removal Service&lt;br&gt;Bath Accessories&lt;br&gt;Window Treatments&lt;br&gt;Appliances</td>
<td><strong>General Liability</strong> $500,000 per occurrence, $500,000 aggregate. County shall be named an additional insured on this policy. &lt;br&gt;&lt;br&gt;<strong>Workers’ Compensation</strong> - Statutory. Employer’s Liability, $500,000 (per accident, illness, disease, aggregate). A waiver of subrogation in County’s favor is required. &lt;br&gt;&lt;br&gt;<strong>Commercial Automobile Liability</strong> $500,000 Combined single limit. County shall be named as an additional insured on this policy.</td>
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<td>Class E</td>
<td>Tub&lt;br&gt;Repair&lt;br&gt;Awnings&lt;br&gt;Signage&lt;br&gt;Music &amp; Audio Systems&lt;br&gt;Mail Boxes</td>
<td><strong>General Liability</strong> $500,000 per occurrence, $500,000 aggregate. County shall be named an additional insured on this policy. &lt;br&gt;&lt;br&gt;<strong>Commercial Automobile Liability</strong> $500,000 Combined single limit. County shall be named as an additional insured on this policy. &lt;br&gt;&lt;br&gt;<strong>Workers’ Compensation</strong> - Statutory. Employer’s Liability, $500,000 (per accident, illness, disease, aggregate). A waiver of subrogation in County’s favor is required.</td>
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§A.9.7 RELEASE AND WAIVER. Design-Builder hereby releases, and shall cause its Contractors and Subcontractors to release, County, as well as its elected officials, employees, agents, and representatives, from any and all claims or causes of action, whatsoever, which Design-Builder and/or its Contractors and Subcontractors might otherwise possess resulting in or from or in any way connected with any loss covered or which should have been covered by insurance (including the deductible portion thereof), maintained and/or required to be maintained by Design-Builder and/or its Contractors and Subcontractors pursuant to the Design-Build Documents.
§A.9.8 PERFORMANCE BOND AND PAYMENT BOND. Pursuant to Section 2269.311, Texas Government Code, Design-Builder shall deliver to County’s Risk Manager not later than the 10th day after the Design-Builder executes the Agreement payment and performance bonds on forms prescribed by County and consistent with the provisions contained in Section 2269.311, Texas Government Code. The penal sum of the payment and performance bonds shall be equal to the construction budget as specified in the Project Criteria package/documentation. When the final Stipulated Sum is established under Article 4 of the Agreement, Design-Builder shall provide revised performance and payment bonds in the amount of the final Stipulated Sum. If construction is phased or staged with different Stipulated Sum Prices established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all Stipulated Sum Prices in effect. The Performance Bond shall remain in effect through the warranty period set forth in Section A.3.5.1, herein.

ARTICLE A.10 UNCOVERING AND CORRECTION OF WORK

§A.10.1 UNCOVERING OF WORK

§A.10.1.1 If a portion of the Work is physically covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for County’s examination and be replaced at Design-Builder’s sole risk of loss and expense, all without any change in the Contract Time. In the case of inspections by archeologists, the excavated areas to be inspected may not be covered or removed or further excavated until the County’s archeologist (UTSA Center for Archeological Research) has released the Project Site (or the affected portion thereof).

§A.10.1.2 If a portion of the Work has been covered which County has not specifically requested to examine prior to its being covered, County may request to see such Work and it shall be uncovered by Design-Builder. If such Work is performed in accordance with the Design-Build Documents, costs associated with uncovering and replacement shall, by appropriate Change Order, be at County’s risk of loss and expense. If, however, such Work is performed not in accordance with the Design-Build Documents, correction shall be at Design-Builder’s own risk of loss and expense, unless the condition was caused by County or a separate contractor, in which event County shall be responsible for payment of such costs and shall not be entitled to any extension of the Contract Time caused by such Delay.

§A.10.2 CORRECTION OF WORK

§A.10.2.1 BEFORE OR AFTER FINAL COMPLETION.

§A.10.2.1.1 Design-Builder shall promptly correct or replace any Work rejected by County or which fails to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional inspection and/or testing, shall be at Design-Builder’s own risk of loss and expense, and inspections and reasonable and necessary costs incurred by County for County’s Consultant’s Design-Builder’s services and expenses made necessary thereby if County’s Consultant is required to make a special trip to inspect the corrected or replaced Work, shall be at Design-Builder’s own risk of loss and expense. Punch list completion verification by County’s Consultant shall be at County’s expense, unless County’s Consultant is required to make more than two (2) trips, in which event the cost thereof shall be paid by Design-Builder if County’s Consultant is required to make a special trip to verify completion of the applicable punch list items.
§A.10.2.2 AFTER FINAL COMPLETION

§A.10.2.2.1 In addition to Design-Builder’s warranty obligations under Section A.3.5, above, if, within (a) one (1) year after the date for commencement of warranties established under Section 6.2.1 of the Supplementary Conditions, or (b) the period of an applicable special warranty required by the Design-Build Documents, whichever is earlier, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, Design-Builder shall correct it promptly after receipt of written notice from County to do so, unless County has previously given Design-Builder a written acceptance of such condition. County shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if County fails to notify Design-Builder and give Design-Builder an opportunity to make the correction, County waives the rights to require correction by Design-Builder and to make a Claim for breach of warranty. If Design-Builder fails to correct any non-conforming Work within a reasonable time during that period after receipt of notice from County, County may correct it in accordance with Section A.2.5, above.

§A.10.2.2.2 The one (1) year period for correction of Work shall be extended with respect to portions of Work first performed after commencement of the warranty period by the period of time between such commencement and the actual performance of the Work.

§A.10.2.2.3 The one (1) year period for correction of Work shall not be extended by corrective Work performed by Design-Builder pursuant to this Section A.10.2.

§A.10.2.3 Design-Builder shall promptly remove from the Project Site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected or replaced by Design-Builder nor accepted by County.

§A.10.2.4 Design-Builder shall bear the cost of and risk of loss for correcting or replacing destroyed or damaged construction, whether completed or partially completed, of County or separate contractors caused by Design-Builder’s correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§A.10.2.5 Nothing contained in this Section A.10.2 shall be construed to establish a period of limitation with respect to other obligations which Design-Builder might have under the Design-Build Documents. Establishment of the one (1) year period for correction of Work as described in Section A.10.2.2, herein, relates only to the specific obligation of Design-Builder to correct or replace the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Design-Builder’s liability with respect to Design-Builder’s obligations other than specifically to correct or replace the Work.

§A.10.3 ACCEPTANCE OF NONCONFORMING WORK

§A.10.3.1 If County prefers to accept Work not in accordance with the requirements of the Design-Build Documents, County may do so instead of requiring its removal and correction or replacement, in which case the Stipulated Sum will be equitably adjusted by Change Order. Such adjustment shall be effected, whether or not Final Payment has been made.

§A.10.3.2 No change in the Work, whether by way of alteration or addition, shall be the basis of an addition to the Stipulated Sum or a change in the Contract Time, unless and until such
alteration or addition has been authorized by a Change Order or Construction Change Directive executed and issued in accordance and compliance with the requirements of the Design-Build Documents or other written authorization from County. No Change Order or Construction Change Directive increasing the Stipulated Sum shall be binding upon County, unless approved in writing by the County’s Commissioners Court (or its designee). **This requirement is of the essence of the Design-Build Documents.** Accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that County has been unjustly enriched by any alteration or adjustment to the Work, whether or not in fact there is any such unjust enrichment, shall be the basis for any claim to an increase in the Stipulated Sum or change in the Contract Time.

§A.10.3.3 Meeting minutes, when delivered to any County office or representative by Design-Builder, shall not constitute formal written notice of any item to be approved hereunder, unless approved in writing by Design-Builder and County’s Commissioners Court (or its designee). The Project Architect, acting on behalf of Design-Builder, shall keep a log of the meeting minutes prepared by the Project Architect, Design-Builder’s Project Manager, or his/her/its designated representative, as approved and/or revised in writing by Design-Builder and County’s Designated Representative.

**ARTICLE A.11 MISCELLANEOUS PROVISIONS**

§A.11.1 GOVERNING LAW

§A.11.1.1 The terms, conditions, and provisions contained in the Design-Build Contract shall be governed by, and construed in accordance with, the applicable laws of the State of Texas.

§A.11.2 SUCCESSORS AND ASSIGNS

§A.11.2.1 County and Design-Builder, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other Party hereto, and to partners, successors, assigns, and legal representatives of such other Party in respect to each of the covenants, agreements, and obligations contained in the Design-Build Documents. Neither Party to the Design-Build Contract shall assign the Design-Build Contract, as a whole, without the prior written consent of the other. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its respective obligations under the Design-Build Contract.

§A.11.3 WRITTEN NOTICE

§A.11.3.1 Any written notice either requested or required under the Design-Build Contract shall be deemed to have been duly served if delivered in person to the designated contact individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or, if sent by registered or certified mail, to the last business address of the intended receiving Party which is known to the Party giving notice. Electronic mail is also sufficient if the receiving party acknowledges receipt via reply email or receipt is otherwise established based on verifiable, written proof.

§A.11.4 RIGHTS AND REMEDIES

§A.11.4.1 Duties and obligations imposed by the Design-Build 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 applicable law.
§A.11.4.2 No action or failure to act by County or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§A.11.4.3 {Intentionally omitted}

§A.11.4.4 {Intentionally omitted}

§A.11.5 DAMAGE PREVENTION Design-Builder shall reasonably protect and prevent damage to all unfinished phases of the Work, including but not limited to, providing normal and customary protection therefrom damage by the elements, theft or vandalism.

§A.11.6 ENTIRE AGREEMENT The Design-Build Documents set forth all agreements between County and Design-Builder relative to the Work, the Design-Build Contract, or Project, and all prior negotiations or agreements are merged herein. No modification hereof or subsequent agreement relative to the subject matter hereof shall be binding unless reduced to writing and signed by the Party to be bound.

§A.11.7 INVALIDITY OF ANY PROVISION If any provision of the Design-Build Documents shall, for any reason, be held in violation of any applicable law, and any material term or condition of the Design-Build Documents is held to be unenforceable, then the validity of such specific provision herein shall not be held to invalidate any other provision herein, all of which other provisions shall remain in full force and effect to the maximum extent permitted by applicable law.

§A.11.8 APPLICATION TO SUBCONTRACTS Any specific requirement in this Exhibit A that the responsibilities or obligations of Design-Builder also apply to a Contractor or Subcontractor is added for emphasis and are also hereby deemed to include all Contractor(s) and Subcontractors of Design-Builder and to any other tier of Subcontractor (except for insurance requirements) to which this Exhibit A has been incorporated by reference. The omission of a reference to a Contractor or Subcontractor in connection with any of Design-Builder's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Contractor or Subcontractor of any tier under the Design-Build Documents or the applicable subcontract.

§A.11.9 NO THIRD PARTY BENEFICIARY The Design-Build Contract is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a Party hereto, except as otherwise expressly and clearly provided herein.

ARTICLE A.12 TERMINATION OR SUSPENSION OF DESIGN-BUILD CONTRACT

§A.12.1 TERMINATION BY DESIGN-BUILDER

§A.12.1.1 Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of thirty (30) consecutive days or more through no act or fault of Design-Builder or its Contractor, Subcontractor, or any of their respective agents or employees or any other person or entity performing portions of the Work under direct or indirect contract with Design-Builder, for any of the following reasons:
a. issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

b. an act of government, such as a declaration of national emergency which requires all Work to be stopped;

c. County has failed to make payment to Design-Builder which is otherwise undisputed in accordance with the Design-Build Documents; or

d. County has failed to furnish to Design-Builder promptly, upon Design-Builder’s written request, reasonable evidence that financial arrangements have been made to fulfill County’s obligations under the Design-Build Documents.

§A.12.1.2 Design-Builder may terminate the Design-Build Contract if, through no act or fault of Design-Builder or its Contractor, Subcontractor, or any of their respective agents or employees or any other person or entity performing portions of the Work under either a direct or indirect contract with Design-Builder, repeated suspensions, delays, or interruptions of the entire Work by County, as described in Section A.13.3, below, constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

§A.12.1.3 If one of the reasons described in Sections A.12.1.1 or A.12.1.2, above, exists, Design-Builder may, upon giving at least seven (7) days’ prior written notice to County, terminate the Design-Build Contract and recover from County payment for Work executed up to the effective date of such termination and for any substantiated loss with respect to materials, equipment, tools, and construction equipment and machinery.

§A.12.1.4 If the Work is stopped for a period of thirty (30) consecutive days or more through no act or fault of Design-Builder or its Contractor, Subcontractor, or any of their respective agents or employees, or any other person or entity performing portions of the Work under either a direct or indirect contract with Design-Builder because County has persistently failed to fulfill County’s obligations under the Design-Build Documents with respect to matters important to the progress of the Work, Design-Builder may, upon giving at least fourteen (14) additional days’ prior written notice to County, terminate the Design-Build Contract and recover from County damages as provided in Section A.12.1.3, herein.

§A.12.2 TERMINATION BY COUNTY FOR CAUSE

§A.12.2.1 County may terminate the Design-Build Contract under Section A.12.2.2, below, if Design-Builder:

a. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials to either (i) regularly adhere to the Project Schedule, or (ii) achieve Substantial Completion within the Contract Time;

b. fails to make payment to any Contractor for services, materials, or labor in accordance with the respective agreements between Design-Builder and the Project Architect, and any Contractor;
c. persistently disregards any applicable laws, ordinances, rules, regulations, or orders of any Governmental Authority; or

d. otherwise is guilty of substantial breach or default of any provision of the Design-Build Documents.

e. becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of its creditors;

f. files, or has filed against it, a petition under a chapter or section of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding.

§A.12.2.2 If an event of default by Design-Builder specified in Section A.12.2.1, above, should occur, then in addition to all other remedies of County under the Design-Build Documents and available at law or in equity, County may, if Design-Builder fails to cure such default within fourteen (14) days following receipt of written notice thereof from County (or in the case of a default which cannot be cured within ten [10] days, Design-Builder fails to commence the curing of such default within fourteen [14] days and continuously prosecutes such curing until completion) immediately and without further notice, terminate the Design-Build Contract, except for the assignment of subcontracts and supply agreements associated with any portion of the Project as contemplated under Section A.5.5.1, above, and may finish the Work by whatever method which County may deem expedient. If the final cost to complete the Work, together with all other damages suffered by County by reason of Design-Builder’s breach or default, other than consequential damages, exceeds the Stipulated Sum specified in Article 4 of the Agreement as adjusted for Change Orders, then such excess shall be paid by Design-Builder to County upon demand, and all such amounts unpaid shall bear interest at the Default Rate.

After any termination of the Design-Build Contract by County pursuant to this Section A.12.2.2, Design-Builder shall not be entitled to any further payment under the Design-Build Contract except to the extent of any amount by which Work completed or installed by Design-Builder in accordance with the Design-Build Documents prior to such termination and not either previously paid for or disputed in good faith by County exceeds the amount due by Design-Builder to County under this Section A.12.2.2 and even then only at such time as the Work is finally completed. It is expressly agreed that pursuit by County of any one or more of the remedies provided herein or otherwise available at law or in equity shall not constitute an election of remedies by County, nor shall forbearance by County to enforce one (1) or more of the remedies provided herein upon an event of default by Design-Builder be deemed or construed to constitute a waiver of such default.

It is recognized that: if an order for relief is entered on behalf of Design-Builder pursuant to Title 11 of the United States Code; if any other similar order is entered under any other debtor relief laws; if Design-Builder makes a general assignment for the benefit of its creditors; if a receiver is pointed for the benefit of its creditors; or if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Design-Builder’s performance of the Design-Build Documents. Accordingly, it is agreed that upon the occurrence of any such event, County shall be entitled to request of Design-Builder or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Design-Build Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle County to terminate the Design-Build Contract and to the accompanying rights set forth above in Section A.12.2.2 hereof.
In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, County shall be entitled to proceed with the Work with its own forces or with another design-builder on a time and material or other appropriate basis, the cost of which will be backcharged against the Stipulated Sum.

§A.12.2.3 When County terminates the Design-Build Contract for one of the reasons stated in Section A.12.2.1, above, Design-Builder shall not be entitled to receive further payment until the Work is finished.

§A.12.2.4 If the unpaid balance of the Stipulated Sum exceeds costs of finishing the Work and other damages incurred by County as provided for under the Design-Build Contract and not expressly waived, such excess shall be paid to Design-Builder. If, however, such costs and damages exceed the unpaid balance, Design-Builder shall promptly pay the difference to County.

§A.12.3 SUSPENSION BY COUNTY FOR CONVENIENCE

§A.12.3.1 County may, without cause, order Design-Builder, in writing, to suspend, delay, or interrupt the Work, in whole or in part, for such period of time as County may determine.

§A.12.3.2 The Stipulated Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.12.3.1, above. Adjustment of the Stipulated Sum shall include profit. No adjustment shall be made to the extent:

a. that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which Design-Builder is responsible; or

b. that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§A.12.4 TERMINATION BY COUNTY FOR CONVENIENCE

§A.12.4.1 County may, at any time, terminate the Design-Build Contract for County's convenience and without cause. County shall have the right to terminate the Design-Build Contract, without cause, at any time by giving to Design-Builder at least seventy-two (72) hours prior written notice thereof. Upon receipt of such notice, Design-Builder immediately shall terminate performance of the Work and make reasonable efforts to mitigate its losses and damages hereunder; provided, however, that in connection with such termination, Design-Builder shall perform such acts as may be necessary to preserve and protect that part of the Work theretofore performed hereunder. Upon such termination without cause, Design-Builder shall retain all sums of money theretofore paid hereunder to Design-Builder; provided that

a. no liens or claims have been filed of record with respect to Work performed hereunder or that all such liens and claims have been satisfied in the manner provided in the Design-Build Documents, provided, further, that Design-Builder has been paid by County for the Work which is the subject of the lien(s) or claim(s) if required to be paid therefore pursuant to the Design-Build Documents, and

b. Design-Builder delivers to County:

ARTICLE 1. Design-Builder's affidavit and a conditional release with respect to the Work performed through the date of termination and paid
for by County to be followed by an unconditional final release upon receipt of payment, in accordance with the applicable provisions contained in Section 53.284, Texas Property Code; and

**ARTICLE 2.** conditional, final Subcontractor and Supplier lien waivers for all subcontracts and supply agreements that have been fully performed as of the effective date of termination; and

**ARTICLE 3.** an assignment to County or to the replacement Design-Builder or County’s designee of all subcontracts and purchase orders which County elects to assume by written notice to Design-Builder if the termination occurs after commencement of construction.

County shall pay to Design-Builder:

A. all retainages, if any, theretofore retained hereunder by County in respect of the Work properly performed up to the effective date of such termination, (other than the retainage relating to portions of the Work performed by Subcontractors and Suppliers whose subcontracts County assumes under the terms of the Design-Build Contract, which retained amounts under such subcontracts will continue to be paid at the time and in the manner specified in Article 5 of the Agreement);

B. payment for the Work properly executed in accordance with the Design-Build Contract prior to the effective date of termination (the basis for such payment shall be as provided in the Design-Build Documents);

C. for the direct costs incurred by Design-Builder in terminating the Work, including the cost of canceling any out-of-pocket costs incurred by Design-Builder to unaffiliated third parties with respect to termination of the Design-Build Contract authorized in accordance with the provision of this Section A.12.4.1; and

D. ten percent (10%) of the unpaid portion of the portion of the Stipulated Sum allocated to Design-Builder’s profit on the unperformed Work, but County shall not otherwise be responsible for damages for lost or anticipated fees and/or profits on Work not performed on account of any termination described in this Section A.12.4.1.

County shall not be obligated to reimburse Design-Builder for any central office overhead in connection with any termination exercised under this Section A.12.4.1. However, in no event shall the amounts to be paid to Design-Builder pursuant to the preceding sentence, when combined with the amounts previously paid to Design-Builder and the costs thereafter required to be paid by County to complete the Work, exceed the Stipulated Sum. The amounts owing by County to Design-Builder pursuant to the two (2) immediately preceding sentences shall be as specified in Design-Builder’s final Pay Application approved by County.

Upon receipt of a notice of termination pursuant to this Section A.12.4.1, Design-Builder shall immediately, according to instructions from County, proceed with performance of the following duties, regardless of delay in determining or adjusting amounts due under this Section 12.4.1:

a. cease operation as specified in the notice;
b. place no further orders and enter into no further subcontracts for materials, labor, services, or facilities, except as otherwise specified in writing by County

c. terminate all subcontracts and purchase orders to the extent that County does not elect to assume such subcontracts and purchase orders in accordance with the terms of the Design-Build Contract; and

d. take actions that may be necessary, or that County may direct in writing, for the protection and preservation of the Work.

§A.12.4.2 In the event of termination for County’s convenience prior to commencement of construction, Design-Builder shall be entitled to receive payment for design services performed, costs actually incurred by reason of such termination, as well as reasonable overhead and profit on design services not completed. In case of termination for County’s convenience after commencement of construction, Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.
EXHIBIT B

PROJECT SCHEDULE
EXHIBIT C

SUPPLEMENTARY CONDITIONS

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ARTICLE 1
AGREEMENT; DEFINITIONS

1.1 Agreement. These Supplementary Conditions are attached as Exhibit C to that certain Design-Build Agreement between the County and Design-Builder (the "Agreement").

1.2 Defined Terms. All capitalized words and phrases used, but not defined, in this Exhibit C shall have the meaning given such term or phrase in Exhibit A to the Agreement.

ARTICLE 2.
GENERAL LAWS GOVERNING CONSTRUCTION

2.1 Compliance with Laws. In the execution of the Design-Build Documents and the Work, Design-Builder shall comply with all applicable state and federal laws including, without limitation, any law governing labor, equal employment opportunity, safety, and environmental protection. Design-Builder shall make familiarize itself with, and at all times shall observe and comply with all applicable federal, state, and local laws, ordinances, and regulations which in any manner affect the conduct of the Work. Except where expressly required otherwise by applicable laws and regulations, County shall not be responsible for monitoring Design-Builder’s compliance with any laws or regulations. Competent evidence of compliance with applicable laws shall be furnished.

2.1.1 Design-Builder shall cooperate with governmental officials at all times where their jurisdiction applies. Except as provided in Section A.2.2.5 of Exhibit A to the Agreement (the "Terms and Conditions"), Design-Builder shall make application, pay all fees, and provide supporting documentation necessary to secure permits, which are required for the performance of the Design-Build Documents and the Work. County may seek waiver by Governmental Authorities of fees in connection with certain permits, such as street closures.

2.1.2 Design-Builder has a continuing obligation throughout the term of the Design-Build Contract to conduct its operations under duly issued permits and, in the event Design-Builder loses or has revoked a necessary permit, Design-Builder must take immediate steps to apply for and receive another permit.

2.1.3 Where the Underwriters’ Laboratories have established standards and issued labels for a particular group, class, or type of equipment, the Underwriters’ label shall be required on all equipment in that category. The National Electric Code and the National Plumbing code shall be minimum requirements. Competent evidence of compliance with applicable codes shall be furnished.

2.2 Federal, State, and Local Taxes. County is exempt from state and local sales and use taxes and shall, upon written request, provide Design-Builder with a sales tax exemption certificate and/or any other documents reasonably requested by Design-Builder so that it does not have to pay sales tax to vendors. To the extent Design-Builder purchases items for the Project which are categorized under 34 Texas Administrative Code, Section 3.291(c)(4), as exempt items from sales and use taxes when purchased for use in the performance of an exempt contract and Design-Builder
includes sales and use taxes for those items on any invoice received by County, County shall
deduct the amount of the taxes from the invoice for purposes of payment and such taxes will not
be considered recoverable as "cost of the Work."

2.3 **Antitrust Claims.** Design-Builder hereby assigns to County any and all claims for
overcharges associated with the Design-Build Contract which arise under the antitrust laws of the

2.4 **Licensing of Trades.** Design-Builder shall comply with all applicable provisions of State
and local law relating to required licensing of skilled tradesmen, Subcontractors, materialmen,
Suppliers, and or laborers, as necessary to accomplish the Work.

2.5 In the event Design-Builder, or one of its Subcontractors, loses its license for any reason
during the term of performance of the Design-Build Contract, Design-Builder shall promptly hire,
or contract for, a licensed provider of the service at no additional cost to County.

2.6 **Royalties and Patents.** Design-Builder shall pay all royalties and license fees. Whether or
not County has specified the use of a particular design, devise, material or process, Design-Builder
shall pay all valid royalties and license fees, and shall provide prior to commencement of the Work
hereunder, and at all time during the performance of same, for the lawful use of any design, device,
material, or process covered by letters, patent, or copyright by suitable legal agreement with
patentee, copyright holder, or their duly authorized representative.

2.7 **Environmental Regulations.** At all times, Design-Builder shall conduct its activities in
compliance with all applicable laws and regulations and other requirements of the Design-Build
Documents relating to the environment, and its protection. County and Design-Builder are jointly
responsible for obtaining and maintaining permits related to stormwater run-off. Design-Builder
covenants to conduct its operations consistent with stormwater run-off permit conditions. Design-
Builder shall be responsible for any Hazardous Materials brought to the Project Site by Design-
Builder, Subcontractors, Suppliers or anyone else for whom Design-Builder is responsible. No
Hazardous Materials shall be incorporated into the Work without the prior written approval of
County.

2.8 **Antiquities.** Design-Builder shall take precaution to avoid disturbing primitive records and
antiquities of archaeological, paleontological, or historical significance within the Project Site. No
objects of this nature shall be disturbed without the prior written permission of County and the
Texas Historical Commission. When such objects are uncovered unexpectedly, Design-Builder
shall stop all Work in close proximity and notify County of their presence and shall not disturb
them until written permission and permit to do so is granted. All primitive rights and antiquities,
as defined in Chapter 191, Texas Natural Resource Code, discovered on County’s property shall
remain property of State of Texas, the Texas Historical Commission. If it is determined by County,
in consultation with the Texas Historical Commission, that exploration or excavation of primitive
records or antiquities on the Project Site is necessary to avoid any loss, damage, or destruction,
Design-Builder shall cooperate in salvage work attendant to preservation. If the Work stoppage
or salvage work causes an increase in Design-Builder’s cost of, or time required for, performance
of the Work, Design-Builder shall be entitled to an extension of the Contract Time and any
additional costs associated with such delay.

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2.9 **Franchise Tax Status:** Design-Builder agrees to execute and provide to County a Certification of Franchise Tax Payment, on a form approved by County.

2.10 **Tax Payer and Vendor Account Information:** Within five (5) days after the Bexar County Commissioners Court approves of the Agreement, Design-Builder shall execute and provide to County a Taxpayer and Vendor Account Information form as obtained from the Texas Comptroller of Public Accounts, stating that Design-Builder is in “Good Standing” and not on “Vendor Hold”.

**ARTICLE 3**

**DRAWINGS AND SPECIFICATIONS**

3.1. **Copies Furnished.** Design-Builder will furnish, free of charge, to County four (4) complete sets of the Contract Drawings and Specifications and electronic files as may be required herein.

3.2. **Interrelation of Documents.** The Drawings shall depict the location and quantity of elements of the Work. The Specifications indicate quality of the Work. All documents are intended to be complementary to produce the Work.

3.3. **Resolution of Conflicts in Documents.** In the event of conflict between or among Drawings and Specifications, the Drawings shall take precedence over the Specifications, but the Specifications shall control over Drawings as to quality of the materials. In the event of conflict among provisions of Specifications, using the CSI/Masterspec format, what is called for in the division of the predominant discipline will govern inconsistent provisions found elsewhere. In the event of a conflict among the Drawings, the large-scale Drawings shall prevail over the small-scale Drawings.

3.4. **Design-Builder’s Duty to Review Design-Build Documents.** In order to facilitate its responsibilities for completion of the Work in accordance with, and as reasonably inferable from, the Design-Build Documents, prior to commencing the Work, Design-Builder shall examine and compare (a) the Design-Build Documents; (b) information furnished by County; (c) relevant field measurements made by Design-Builder; and any visible conditions at the Project Site affecting the Work. By proceeding with each portion of the Work, the Design-Builder indicates that: (i) all details, construction procedures, and materials shown or specified in the Design-Build Documents, as well as the information furnished by County with respect to that portion of the Work, are consistent with sound and acceptable practices within the construction industry; and (ii) Design-Builder is willing and able to construct that portion of the Work in accordance with all requirements of the Design-Build Documents within the Contract Time and at, or under, the Stipulated Sum. If Design-Builder performs any portion of the Work knowing it to be in error or in violation of any legal requirement or which, from the Design-Builder’s review of the Design-Build Documents, as well as the information furnished by County, the Design-Builder should have known that the design, the Design-Build Documents, or the information furnished by County contained errors, omissions, inconsistencies, or discrepancies, the Design-Builder shall assume full responsibility therefore and bear all costs and risk of loss attributable thereto.
3.5. Other Information Provided to Design-Builder. County may provide Design-Builder with information, reports, pictures, or other items which are not contained within the Design-Build Documents, but which Design-Builder should review and use pursuant to Section 3.4, herein.

3.6. Requirements for Record Documents. The Design--Builder shall maintain at the Project Site at least one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings and Contract Modifications, and all Project correspondence. The Design-Builder shall maintain Drawings and Specifications in good order and marked to record all changes made during construction. The Design-Builder shall keep on the Project Site of the Work at least one (1) copy of the current and updated Contract Drawings and Specifications, and shall, at all times, give County or its representatives and agents access thereto.

3.6.1. Further, the Design-Builder shall maintain this record set of Drawings and Specifications which reflect the “As-Constructed” conditions and representations of the Work performed, whether it be directed by Addendum, Change Order, or otherwise. All records prescribed herein shall be made available for reference and examination by County and its representatives and agents upon request.

3.6.2. Design-Builder shall update the “As-Constructed” Drawings and Specifications no less often than monthly but always prior to the submission of periodic partial pay estimates. Failure to maintain such records shall constitute cause for denial of a progress payment otherwise due.

3.6.3. Prior to requesting a Substantial Completion Inspection by County, Design-Builder shall furnish a complete set of the “mark-up” “As-Constructed” documents maintained at the Project Site and one (1) photocopy of same. Concurrently with furnishing these record blueline drawings, Design-Builder shall also furnish a preliminary copy of each operating and maintenance manual (O&M) required by the Design-Build Documents, for review by County.

3.6.4. Once determined acceptable, Design-Builder shall provide to County: two (2) sets of “As-Constructed” Drawings and Specifications (hardcopy), two (2) sets of operating and maintenance manuals (hardcopy), one (1) set of approved submittals, RFI’s, ASI’s, and other record documents as required elsewhere in the Design-Build Documents (hardcopy), and one (1) set of electronic files of each of the foregoing.

ARTICLE 4
RESPONSIBILITIES OF COUNTY AND DESIGN-BUILDER

4.1 Preconstruction Conference. Prior to, or concurrent with, the issuance of Notice to Proceed (for Construction), a conference will be held. It must be attended by County, Design-Builder, Project Architect, Contractor, and all Subcontractors, as appropriate, to establish a working understanding among such persons and entities as to the Work, the operating conditions at the Project Site, and general administration of the Project, including communications, schedules, procedures for handling Shop Drawings, and other submittals, processing Pay Applications,
maintaining required records and all other matters of importance to the administration of the Project and effective communications on the Project Site.

4.1.1 **Surveys.** Upon request, County shall furnish all surveys describing the legal description and limitations associated with the Project Site, and other information under County’s control, to Design-Builder.

4.2 **County Supplied Materials and Information.** Information, equipment, or Services under County’s control and necessary to perform the Work or benefit the Project shall be furnished by County to Design-Builder with reasonable promptness to avoid delay in orderly progress of the Work.

4.3 **Availability of Lands.** County shall furnish all required rights to use the Project Site for the Work, as well as rights-of-way and easements for access thereto, and such other lands which are designated for use by Design-Builder. County shall identify any encumbrances or restrictions specifically related to use of the Project Site as to which Design-Builder, as well as its Contractors, Subcontractors, and Suppliers, or other person or organization employed to retained by such, will have to comply. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by County, unless otherwise provided in the Design-Build Documents. If County fails to furnish the Project Site, or rights of way or easements for access thereto, in a timely manner, Design-Builder may make a claim for compensation.

4.4 {Intentionally omitted}

4.5 **Limitations on County’s Duties.** County will not supervise, direct, control, or have authority over, or be responsible for, Design-Builder’s means, methods, technologies, sequences, or procedures of construction or the safety precautions and programs incident thereto. County is not responsible for any failure of Design-Builder to comply with any laws and regulations applicable to furnishing or performing the Work. County is not responsible for the failure of Design-Builder to perform or furnish the Work in accordance with the Design-Build Documents. County is not responsible for the acts or omissions of Design-Builder, or of any Contractor, any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

4.6 **Design-Builder’s General Responsibilities.** Design-Builder shall perform all services specifically allocated to it by the Design-Build Documents, as well as those services reasonably inferable from the Design-Build Documents and as necessary for completion of the Work and the Project. Design-Builder agrees to perform those services and supervise and direct the Work in accordance with approved practices and customs of Design-Builder’s professional or business to assure that each element of the Work conforms to the Design-Build Documents’ requirements. Design-Builder shall be solely responsible (with its Contractors and Subcontractors responsible to Design-Builder) for all design, construction means, methods, techniques, safety, sequences, and procedures, and for coordinating all portions of the Work under the Design-Build Documents. Design-Builder shall be responsible to see that the completed Work complies both completely and accurately with the Design-Build Documents.
4.6.1 Project Administration. Design-Builder shall provide Project administration in accordance with provisions of the applicable Specifications, the Design-Build Documents, and as outlined in the Preconstruction Conference.

4.6.2 Design-Builder’s Project Architect. Unless otherwise provided for in the Design-Build Documents, the Project Architect will perform the duties of the Architect/Engineer as described in the Design-Build Documents during design and construction and until Final Payment, including advising Design-Builder and County on matters where assistance is needed.

4.6.3 Design-Builder’s Superintendent. Design-Builder shall employ a competent, resident superintendent who shall be in attendance at the Project Site during the progress of the Work. The superintendent must be satisfactory to County, and shall not be changed except with the prior written approval of County, unless he or she leaves the employment of Design-Builder. The superintendent shall have full authority to act on behalf of Design-Builder at the Project Site with respect to supervising Design-Builder’s activities at the Project Site. The superintendent will not have the authority to contractually bind Design-Builder or make any communications contractually required of Design-Builder herein. All oral communications affecting any interpretation of the Design-Build Documents will be promptly confirmed in writing by the Design-Builder’s superintendent and submitted to both County’s Designated Representative and County’s Project Manager.

4.6.4 Labor. Design-Builder shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Design-Build Documents. Design-Builder shall, at all times, maintain good discipline and order at the Project Site.

4.6.5 Services, Materials, and Equipment. Unless otherwise specified in the other Design-Build Documents or herein, Design-Builder shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, electronic data, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work. Design-Builder shall provide, without extra charge, all incidental items required as a part of the Work, even though not particularly specified or indicated in the Design-Build Documents.

4.6.6 Documents and Samples at the Project Site. Design-Builder shall maintain at the Site at least one (1) record copy of the Drawings, Specifications, addenda, Change Orders, and other Modifications, in good order and marked currently to record field changes and selections made during construction, and at least one (1) record copy of approved Shop Drawings, Samples, and similar required submittals. These shall be delivered to County promptly after the completion of the Work or Design-Builder’s request for Substantial Completion Inspection.
4.6.7 Should any Work be identified by County as being not in compliance with the Design-Build Documents, County shall communicate the finding to Design-Builder and such Work shall be promptly corrected by Design-Builder at its own expense and risk of loss. The approval of Work by County does not relieve Design-Builder from compliance with all requirements of the Design-Build Documents.

4.6.8 Design-Builder shall enter into written agreements with all Contractor(s), Subcontractors, and Suppliers which it retains in connection with the Project and which specifically bind the Contractor(s), Subcontractors, and Suppliers to the terms and conditions of the Design-Build Documents for the benefit of County as a third party beneficiary. All such written agreements shall expressly state this provision.

4.6.9 Design-Builder shall be solely responsible for scheduling and coordinating the Work of Contractor(s), Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under a direct or indirect contact with Design-Builder. Design-Builder shall require all Contractor(s), Subcontractors, Suppliers, and such other persons and organizations performing or furnishing any of the Work to communicate with County only through Design-Builder.

4.6.10 Copies of Design-Builder’s insurance policies and those of its Contractor(s) and first-tier Subcontractors will be made available to County in accordance with Article A.9 of Exhibit A to the Agreement. Design-Builder agrees that County has no obligation to review or approve the content of such contracts and that providing County such copies shall in no way relieve Design-Builder of any of the terms and conditions of the Design-Build Documents including, without limitation, any provisions of the Design-Build Documents which require the Subcontractors to be bound to Design-Builder in the same manner in which Design-Builder is bound to County.

4.6.11 Continuing the Work. Design-Builder shall carry on the Work and adhere to the Project Schedule during all disputes, disagreements, or resolution of claims processes with County except for non-payment by the County which does not arise out of, result from, or otherwise be connected with any breach or default of Design-Builder or any of its employees, subcontracts, laborers, suppliers, or sub-consultants in connection with part of the Project. No Work shall be delayed or postponed pending resolution of any disputes, disagreements, or processes, except as County and Design-Builder may agree in writing.

4.6.12 Cleaning. Design-Builder shall at all times keep the Project Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Design-Build Documents. Upon completion of the Project, and prior to the final inspection, Design-Builder shall have the Work and Project Site in a neat and clean condition.
4.6.13 Acts and Omissions of Design-Builder, its Contractor(s), Subcontractors and Employees. Design-Builder shall be responsible for acts and omissions of its employees and its Contractor(s), Subcontractors, their respective agents and employees. County may, in writing, require Design-Builder to immediately and either temporarily or permanently remove from the Work any of its employees or its Contractor' (s) or Subcontractor's employees that County's Designated Representative or County's Project Manager finds to be careless, unqualified, or otherwise objectionable.

4.6.14 Design-Builder shall promptly advise County in writing of any written Claim or demand against County or Design-Builder known to Design-Builder which is related to or arising out of Design-Builder's activities under the Design-Build Documents that could reasonably be expected to result in an increase to the Stipulated Sum or the Contract Time. Such notification shall be in writing and shall occur in accordance with Article A.4 of Exhibit A to the Agreement.

4.6.15 The duties listed above are in addition to the duties, responsibilities, and activities to be undertaken by Design-Builder as specified throughout the Design-Build Documents.

4.6.15.1 Design-Builder will operate and maintain operations areas and associated storage areas at the Project Site of the Work in accordance with the following:

4.6.15.2 All Design-Builder operations, including storage of materials and employee/contractor/subcontractor parking upon the Project Site of the Work, shall be confined to areas designated by County.

4.6.15.3 Design-Builder may erect, at its expense from funds within the fee, temporary buildings which shall remain its property at such location(s) authorized in advance by County. Design-Builder shall remove such buildings and associated utilities service lines promptly after the completion of the Work, unless Design-Builder requests, and County provides, written consent that it may abandon such buildings and utilities in place.

4.6.16 County may restrict Design-Builder's right of ingress to and egress from the Project Site to specifically assigned entrances and routes.

4.6.17 Design-Builder shall keep, at all times, the premises and surrounding area free from accumulation of debris, trash, waste materials, surplus materials and rubbish caused by operations under the Design-Build Documents. Design-Builder agrees to retrieve, handle, pick up, contain and remove from the Project Site in a safe and orderly manner, and arrange for the proper transport and disposal of, in accordance with legal requirements and the Design-Build Documents, all the debris, trash, waste materials, and rubbish generated during the course of its Work and on final completion of the Work. County must not be designated as the generator on
manifests and the like for debris, trash, waste materials, surplus materials, and rubbish caused by operations under the Design-Build Documents. Disposal of debris, trash, waste materials, surplus materials, and rubbish shall be done on a day-to-day basis as determined necessary by County and as required by legal requirements or the Design-Build Documents, or both. It is the sole responsibility of Design-Build to determine current and applicable waste storage, handling, transportation, and disposal regulations for the Project Site and for each waste transport, storage, and disposal facility. Design-Build must comply fully at its sole cost, risk, and expense with these regulations and any other applicable legal requirements. Design-Build shall provide County with the name and address of each waste transport, storage, or disposal facility prior to any transport, storage, or disposal, and County shall have the right to reject any proposed transport, storage, or disposal facility. County undertakes no obligation as a consequence of such right to reject a transport, storage, or disposal facility and no such right to reject (whether exercised or not) shall in any way affect County’s rights hereunder or in any manner be deemed to constitute approval by County of any act or omission of Design-Build or any Contractor or Subcontractor, or of any transport, storage, or disposal facility. Design-Build will document actual transportation and disposal of the waste at the designated facility by preparing all records required by legal requirements including, but not limited to, any required transport or disposal certificates or manifests. Design-Build will forward the properly completed documents, manifests, and any other required transport or disposal certificate to County within the time required by the applicable legal requirements and Design-Build Documents. At the completion of the Work, Design-Build shall remove from, and about, the Project Site all debris, trash, waste materials, surplus materials, rubbish, tools construction equipment, and machinery which was associated with the Work and Project. Design-Build shall bring and store at the Project Site only materials and equipment which are to be used directly in the Work on the Project Site. After equipment is no longer required for the Work, Design-Build shall promptly remove it from the Project Site. Protection of construction material and equipment stored at the Project Site from weather, theft, damage, and all other loss is solely the responsibility of Design-Build. Prior to Design-Build’s requested date for a pre-final inspection, Design-Build shall remove any and all remaining equipment from the Project Site and shall leave the premises in a clean, neat and workmanlike condition which is satisfactory to County. Reference within this Section 4.6.17 to debris, trash, waste materials, and rubbish specifically excludes Hazardous Materials.

ARTICLE 5
ADDITIONAL DESIGN-BUILDER RESPONSIBILITIES WHEN COUNTY AWARDS SEPARATE CONTRACTS

5.1 Separate Contracts. County reserves the right to award contracts covering the services of an architect or engineer in connection with the Project as required in Section 2269.305, Texas
Government Code. County reserves the right to perform operations related to the Project with County’s own employees or agents.

5.2 County reserves the right to make essential installations that are pertinent to the use of the Project and are not included under the Work covered by the Design-Build Documents. Within this right, County may enter into other contracts or may do such work with its own labor forces and materials. Design-Builder shall not commit or permit any act that will interfere with the performance of work by County’s employees, contractors, or agents and shall afford them reasonable opportunity for the introduction and storage of their materials and the execution of their work, including the coordination of their work with that of Design-Builder’s Work. Design-Builder shall cooperate to the end that County may realize complete functioning of the Project on the day of Substantial Completion.

5.2.1 County shall provide for coordination of the activities of County’s employees or agents with the Work of Design-Builder, who shall cooperate with them.

ARTICLE 6
WARRANTY OF CONSTRUCTION; MATERIALS AND WORKMANSHIP; LICENSING AND TESTING

6.1 Design-Builder’s General Warranty and Guarantee. Design-Builder warrants to County that all Work shall be executed in accordance with the Design-Build Documents, complete in all parts and in accordance with approved practices and customs of Design-Builder’s profession or business. Unless otherwise specified in the Design-Build Documents, all materials and equipment incorporated in the Work under the Design-Build Documents shall be new. County may, at its option, agree in writing to waive any failure of the Work to conform to the Design-Build Documents, and to accept a reduction in the Stipulated Sum for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, however, Design-Builder’s obligation to perform and complete the Work in accordance with the Design-Build Documents shall be absolute and is not waived by any inspection or observation by County, the Project Engineer, or others; by making any progress payment or Final Payment; by the use or occupancy of the facility, or any portion thereof, by County at any time; or by any repair or correction of such defect made by County.

6.2 Warranty of Construction. In addition to any other warranties in the Design-Build Documents, Design-Builder warrants, except as provided in Section 6.2.9 of this Article 6, that all Work performed under the Design-Build Documents conforms to the Design-Build Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed, by Design-Builder or any Subcontractor or Supplier at any tier.

6.2.1 Except for longer warranties required of Design-Builder under the Specifications on certain items, this warranty shall continue for a period of one (1) year from the date of Substantial Completion of the Project. If County takes possession of any part of the Work before Substantial Completion, this warranty for such part of the Work shall continue for a period of one (1) year from the date County takes physical possession of, and control over, the affected building(s) or facility(ies).
6.2.2 Design-Builder shall remedy, at Design-Builder’s risk and expense, and in accordance with Section A.3.5.1 of Exhibit A to the Agreement, any failure to conform to the Design-Build Documents or any defect, provided that County submits to Design-Builder written notice of such failure to conform to the Design-Build Documents or defect within the applicable warranty period.

6.2.3 Design-Builder shall restore any Work damaged in fulfilling the terms and conditions of this Article 6. Design-Builder’s warranty with respect to any Work which is repaired or replaced will run for one (1) year from the date of the completion of such repair or replacement.

6.2.4 County shall notify Design-Builder, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

6.2.5 If Design-Builder fails to remedy any failure, defect, or damage within a reasonable time after receipt of County’s applicable notice, County shall have the right to replace, remove, or otherwise remedy the failure, defect, or damage at Design-Builder’s expense. In the case of an emergency where delay would cause serious risk of loss or damage to County and, if Design-Builder fails to proceed promptly to remedy the defect(s) within a reasonable time considering the potential risk of loss or damage, County may have the defect(s) corrected and Design-Builder and its surety shall be liable for all expenses incurred.

6.2.6 With respect to all warranties, express or implied, from Contractor(s), Subcontractors, manufacturers, or Suppliers for Work performed and materials furnished under the Design-Build Documents, Design-Builder shall:

6.2.6.1 Obtain all warranties that would be given in normal commercial practice;

6.2.6.2 Require all warranties to be executed, in writing, for the benefit of County; and

6.2.6.3 Enforce all warranties for the benefit of County during the warranty period specified in Section 6.2.1, herein.

6.2.7 In the event that Design-Builder’s warranty under this clause has expired, County may bring suit, at its expense, to enforce a Subcontractor’s, manufacturer’s, or Supplier’s warranty.

6.2.8 Unless a defect is caused by the negligence of Design-Builder, or its Contractor, Subcontractor or Supplier at any tier, Design-Builder shall not be liable for the repair of any defects of material or design furnished by County or for the repair of any damage that result from any defect in material or designs furnished by County.

6.2.9 The warranties described in this Article 6 shall not limit County’s rights with respect to latent defects, gross mistakes, or fraud.
6.3  **Events Not Affecting Warranty.** Design-Builder’s obligation to perform and complete the Work in a good and workmanlike manner, within the Contract Time, and in accordance with the Design-Build Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Design-Build Documents or a release of Design-Builder’s obligation to perform the Work in accordance with the Design-Build Documents:

6.3.1 Observations by County;

6.3.2 Recommendation to pay any progress or Final Payment;

6.3.3 The issuance of a Certificate of Substantial Completion, or any payment by County to Design-Builder under the Design-Build Documents;

6.3.4 Use or occupancy of any building or facility that was subjected to any Work, or any part thereof, by County;

6.3.5 Any acceptance by County of any Work, or any failure to do so;

6.3.6 Any review of a Shop Drawing or Sample submittal; or

6.3.7 Any inspection, test, or approval by other entities not under contract with Design-Builder.

6.4  With respect to any warranty obligation under the Design-Build Documents exceeding the one (1) year warranty period specified in Section 6.2.1, herein, including, without limitations, the obligations of Design-Builder under Sections A.3.5 and A10.2.2, also herein, Design-Build Contractor may satisfy any such obligation by obtaining and assigning to County a complying warranty from the applicable manufacturer, Supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by County which does not fully comply with the requirements of the Design-Build Documents, Design-Builder shall remain liable to County on all elements of the required warranty that are not provided by the assigned warranty.

**ARTICLE 7**

**SHOP DRAWINGS AND SUBMITTALS**

7.1  **Design-Builder’s Submittals.** Design-Builder shall submit, with reasonable promptness consistent with the Project Schedule, and in orderly sequence, all Shop Drawings, Samples, or other information required by the Design-Build Documents, or as governed by Change Orders. Design-Builder shall review each submittal for compliance with the Design-Build Documents and shall certify that it has done so by stamp, or otherwise, affixed to each copy thereof. Design-Builder shall provide copies to County’s Designated Representative. Submittal data presented without such Design-Builder certification will be returned without review or other comment, and any resulting delay shall be Design-Builder’s responsibility.

7.1.1 Design-Builder shall, within twenty (20) Calendar Days after receipt of the Notice to Proceed, submit to County four (4) copies of a submittal schedule, listing all
items that shall be furnished, for review and approval by County. The schedule shall also list all items that are to be reviewed and approved by Design-Builder.

7.1.2 Such submittal schedules shall include, among other things, Shop Drawings, manufacturer's literature, certificates of compliance, materials Samples, materials colors, guarantees, etc.

7.1.3 The submittal schedules shall indicate the type of item, contract requirements reference, Design-Builder's scheduled dates for submitting the above items, the projected "need" dates for approval answers from County, and the projected dates for procurement. This schedule shall show a minimum of fourteen (14) Days after receipt for review and approval by County, and if re-submittal is required, an additional seven (7) Days will be allowed for approval after receipt. Design-Builder will revise and/or update this schedule as appropriate, and submit it with each payment estimate.

7.1.4 The submittal schedule shall be coordinated with the Work Progress Schedule for all the Work. Design-Builder shall revise and/or update both schedules at least once per calendar month to ensure consistency and current Project data. Four (4) copies of such updated schedules shall be provided to County concurrent with each Pay Application.

7.1.5 Shop Drawings, Samples, or other required information shall be properly identified, as specified or as County may require. At the time of submission, Design-Builder shall inform County in writing of any deviation in the Shop Drawings or Samples from the requirements of the Design-Build Documents.

7.1.6 By submitting Shop Drawings, Samples, or other required information, Design-Builder thereby represents that it has determined and verified all field measurements, field construction criteria, materials, catalog numbers, and similar data, or will promptly do so, and that it has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and Design-Build Documents.

7.2 Nature and Effect of Review. County will review all submittals, with reasonable promptness, for conformance with the design concept of the Project and with the information given in the Design-Build Documents. Such review will be indicated in writing. The review of a separate item shall not indicate review of an assembly in which the item functions. The review of the Shop Drawings or Samples shall not relieve Design-Builder of responsibility for any deviation from the requirements of the Design-Build Documents, unless Design-Builder has informed County in writing of such deviation at the time of submission and County has not objected to the specified deviation. The review shall not relieve Design-Builder from responsibility for errors or omissions in the Shop Drawings or Samples.

7.3 Correction and Resubmission. Design-Builder shall make any corrections required to a submittal and shall re-submit the required number of corrected copies of the submittals promptly
so as to avoid delay, until there are no exceptions. Design-Builder shall direct attention in writing to County any new revisions other than the corrections requested on previous submissions.

7.4 Limits on Shop Drawing Approvals. No Work requiring a Shop Drawing or Sample submission shall be commenced until the submission has been reviewed with no exceptions. All such Work shall be in accordance with reviewed Shop Drawings and Samples. Reviews of Shop Drawings and Samples are not an authorization for Design-Builder to perform extra Work or changed Work, unless Change Order procedures are also followed. County’s review with no exceptions does not relieve Design-Builder from responsibility for defects in the Work resulting from errors or omissions of any kind on the reviewed Shop Drawing or Sample.

7.5 County may establish routine review procedures and schedules for submittals at the preconstruction conference.

7.6 Unauthorized Substitutions at Design-Builder’s Risk. All proposed substitutions of materials, equipment, or fixtures shall be presented through the submittal process. Design-Builder shall be financially responsible for any additional costs or delays resulting from using materials, equipment, or fixtures other than those specified, and shall promptly reimburse County for any increased design or contract administration costs resulting from such unauthorized substitutions.

ARTICLE 8
INSPECTION OF CONSTRUCTION

8.1 Tests and Inspections

8.1.1. Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by applicable laws, ordinances, rules, regulations, or orders of Governmental Authorities shall be made at an appropriate time. Unless otherwise provided, Design-Builder shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity reasonably acceptable to County or with the appropriate Governmental Authority, and shall bear all related costs of tests, inspections, and approvals. Design-Builder shall give timely notice of when and where tests and inspections are to be made so that County may be present for such procedures.

8.1.2. If County or any Governmental Authority determines that portions of the Work require additional testing, inspection, or approval not included under Section 8.1.1, above, County shall in writing instruct Design-Builder to make arrangements for such additional testing, inspection, or approval by an entity acceptable to County, and Design-Builder shall give timely notice to County of when and where tests and inspections are to be made so that County may be present for such procedures. Such costs, except as provided in Section 8.1.3, below, shall be at County’s expense.

8.1.3. If such procedures for testing, inspection, or approval under Sections 8.1.1 and 8.1.2, above, reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such
failure, including those of repeated procedures, shall be at Design-Builder’s expense.

8.1.4. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Design-Build Documents, be secured by Design-Builder and promptly delivered to County.

8.1.5. If County is to observe tests, inspections, or approvals required by the Design-Build Documents, County will do so promptly and, where practicable, at the normal place of testing.

8.1.6. Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

ARTICLE 9
CLOSING INSPECTIONS

9.1 Substantial Completion Inspection. When Design-Builder considers the entire Work, or any part thereof, Substantially Complete, Design-Builder shall inspect the Work, or designated portion thereof, for compliance with the Design-Build Documents and notify County in writing that the Work will be ready for the Substantial Completion Inspection on a date certain. Design-Builder shall include with this notice a copy of its updated inspection list marked to indicate corrected items, plus a list of items to be completed or corrected prior to Final Inspection which Design-Builder recognizes exist but believes do not prevent the Work or part thereof from being substantially complete. The failure to include any items on such list does not alter the responsibility of Design-Builder to complete all Work in accordance with the Design-Build Documents. County will review Design-Builder’s list of items, and either will schedule the requested inspection or will inform Design-Builder in writing that such an inspection would be premature because the Work is not sufficiently advanced or that conditions are not as represented on Design-Builder’s list.

9.1.1 Prior to the Final Inspection, Design-Builder shall furnish to County a copy of the “As-Built” blueline prints and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications or parts for all installed equipment, systems, and like items. If Design-Builder does not furnish these requirements and County must of necessity otherwise obtain this information and data, the costs for obtaining it will be deducted from payments due Design-Builder. County and Design-Builder will jointly conduct the Substantial Completion Inspection.

9.1.2 On the date indicated by Design-Builder, County and Design-Builder shall inspect the Work, and if County determines that the Work is Substantially Complete, a Certificate of Substantial Completion shall be prepared by Design-Builder for certification by County and Design-Builder, fixing the date of Substantial Completion. Design-Builder will provide with this Certificate a list of items to be completed prior to final inspection (the “Pre-Final Punchlist”). This list may include
additional items not included on Design-Builder's list, which are deemed necessary by County to correct or complete prior to Final Inspection.

9.2 Final Inspection. Design-Builder shall complete the items listed on the Pre-final Punchlist prior to Final Inspection. Unless otherwise specified in the Design-Build Documents, or otherwise agreed in writing by the Parties, Design-Builder shall complete this work within sixty (60) days of the certified date of Substantial Completion. When Design-Builder has completed the Pre-final Punchlist, it shall give written notice to County that the Work will be ready for Final Inspection on a date certain. This notice shall be accompanied by a copy of Design-Builder's updated Punchlist indicating resolution of all items. On this date County and Design-Builder shall inspect the Work and Design-Builder shall submit to County a list of items which have been determined to require correction or completion, if any, before the Work will be accepted by County (the "Final Punchlist").

9.2.1 Design-Builder shall correct or complete all items on the Final Punchlist before Acceptance and Final Payment by County. Unless otherwise specified, Design-Builder shall complete this additional work within seven (7) Days of receiving the Final Punchlist or as soon as is reasonably feasible. Upon completion of the Final Punchlist, Design-Builder shall notify County, in writing, stating the disposition of each Punchlist item, and County shall promptly inspect the completed items. When the Final Punchlist has been completed, and the Agreement is fully performed according to the Design-Build Documents, and is acceptable to County, County shall issue a certificate fixing the date of Final Completion. Final Completion of all work shall be a condition precedent to Design-Builder's right to receive Final Payment.

9.2.2 Any Certificate issued under this Article 9 may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by County.

9.2.3 Inspection by County is for the purpose of determining the completion of the Work, and does not relieve Design-Builder of its overall responsibility for completing the Work in a good and workmanlike fashion, in compliance with the Design-Build Documents. Failure of County to identify Work that is not in compliance with the Design-Build Documents, or which is defective in operation or workmanship, or acceptance of the Work with Punchlist items left incomplete, does not constitute a waiver of such a defect, or of County's rights under the Design-Build Documents nor does it relieve Design-Builder of its warranties.

9.3 Additional Inspections.

9.3.1 If, on the basis of the Substantial Completion Inspection, County determines that the Work is not Substantially Complete, County shall give Design-Builder written notice thereof, and shall inform Design-Builder what Work was found to be incomplete, out of compliance with the Design-Build Documents, or defective in operation or workmanship, and will designate a date and a time by which the incomplete or defective Work is to be completed. Design-Builder shall complete
or correct all Work so designated prior to requesting a second Substantial Completion Inspection.

9.3.2 If, on the basis of the Final Inspection, County determines that the Work is not complete according to the Design-Build Documents, or that the Work required by the Pre-final Punchlist had not been performed, County shall give Design-Builder written notice thereof, and shall inform Design-Builder what Work was found to be incomplete, out of compliance with the Design-Build Documents or defective in operation or workmanship, and will designate a date and a time by which the incomplete or defective Work is to be completed. Design-Builder shall complete or correct all Work so designated prior to requesting a second Final Inspection.

9.3.3 County contemplates three (3) inspections only in connection with the Work and Project: the Substantial Completion Inspection, the Final Completion Inspection, and the Inspection of Completed Final Punchlist Items. The cost to County of any and all additional inspections deemed necessary by County because the Work was not ready for one or more of these inspections shall be borne by Design-Builder, and County may issue a Unilateral Change Order deducting these costs from the Final Payment. Upon Design-Builder’s written request, County shall promptly furnish documentation of all costs so deducted. Work added to the Agreement by Change Order after Final Inspection shall not be considered as corrective work for purposes of determining

9.3.4 Phased Completion. County may require, or other Project conditions may warrant, as determined by County, that designated elements or parts of the Work shall or may be completed in phases. Where phased completion is required or specifically agreed to by the Parties, the provisions of Articles 9 (Closing Inspections) of these Supplementary Conditions and Section 5.14 of the Agreement (Partial Occupancy) shall apply independently to each designated element or part of the Project. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work, as a whole, shall be the date on which the last element or part of the Work to be completed is certified as Substantially Complete, and Final Completion of the Work as a whole shall be the date on which the last element or part of the Work to be completed is certified as Finally Complete.

ARTICLE 10
CHANGES

10.1 The scope of the Project will be set at the time the Stipulated Sum is established. The elements that make up the scope of the Project are:

10.1.1 Square footage of the Project;
10.1.2 Assumed occupancy of the various areas of the Project;
10.1.3 The quality of the Project; and
10.1.4 Construction activity sequence and durations.
10.2 A change to any of the above elements will be considered a change in the scope of the Project and could result in a change in the Stipulated Sum and/or Contract Time.

10.3 Refinement and detailing will be accomplished from time to time with respect to the Plans and Specifications. No adjustment in the Stipulated Sum or the Contract Time shall be made due to these unless such refinement or detailing results in changes in the scope of the Project or the Plans and Specifications not reasonably foreseeable by Design-Builder.

10.4 A Change Order is a written modification of the Agreement. A Change Order authorizes a change in the Scope of the Work, an adjustment in the Stipulated Sum, or the Contract Time. Work performed under a Change Order is subject to all provisions of the Design-Build Documents. Change Order Requests may be initiated by County or by Design-Builder.

10.5 County may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a Change Order, make changes in the Work within the general scope of the Agreement, including changes:

10.5.1 In the Specifications, Drawings, or Designs;

10.5.2 In the method or manner of performance of the Work;

10.5.3 In the facilities, equipment, materials, services, or Project Site to be furnished by County; or

10.5.4 By directing acceleration in the performance of the Work.

10.6 Change Orders may be utilized by the Parties as provided in the following sections of Exhibit A to the Agreement, Terms and Conditions: (a) Section A.3.4.2, Allowances; (b) Section A.7.2, Delays and Extensions of Time; (c) Section A.10.1.2, Uncovering of Work; and (d) Section A.10.3.2, Acceptance of Nonconforming Work.

10.7 Any other written or oral order or directive (which, as used in this paragraph includes direction, instruction, interpretation, or determination) from County that causes a change in Design-Builder's obligations under any of the Design-Build Documents shall be treated as a Change Order under this Article 10; provided, that Design-Builder gives County written notice stating:

10.7.1 the date, circumstances, and source of the order or directive; and

10.7.2 that Design-Builder regards the order or directive as a Change Order.

10.8 County shall have the authority to order minor changes in the Work not involving adjustment in the Stipulated Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on Design-Builder. Design-Builder shall carry out such written orders promptly. Notwithstanding anything contained in Article 4, herein, to the contrary, in no event shall any changes in the Work with respect to the manufacturer of a specified item or material, or the color, quality or grade, or physical composition of any specific item or material, be made without the
prior written consent of County, nor shall any change in any dimension of any component of the Work or equipment incorporated into the Work be made without the prior written consent of County if such changes affect the operation or functionality of the Project or aesthetics of the Work, even if any of the above-described changes would be considered a minor change in the Work.

10.9 If any change under this clause causes an increase or decrease in Design-Builder’s cost of, or the time required for, the performance of any part of the Work under the Agreement, whether or not changed by any such order, County shall make an equitable adjustment and modify the Agreement in writing. However, except for a proposal based on defective specifications, no proposal for any change shall be allowed for any costs incurred more than thirty (30) days before Design-Builder gives written notice as required.

10.10 Design-Builder must submit any proposal under this Article 10 within twenty-one (21) Days after: (a) receipt of a written Change Order; or (b) the furnishing of a written notice describing the general nature and amount of the proposal, unless this period is extended by County.

10.11 No adjustment under this clause shall be allowed if asserted after Final Payment is made under the Agreement. County’s Contingency is controlled solely by County.

10.12 Design-Builder’s Contingency: See Section 5.9 of the Agreement.

10.13 Except as provided by Section 10.7, above, all changes in the scope of the Work, the Stipulated Sum, and/or the Contract Time shall be documented by a Change Order to be approved by the Bexar County Commissioners Court. Change Orders are the exclusive method for modifying the Stipulated Sum or Contract Time. Neither County nor any other person, organization, or entity may change the scope of the Work, the Stipulated Sum, or the Contract Time by any method, expressed or implied, other than by a Change Order.

10.14 Any direction, instruction, interpretation, or determination from County shall not be considered for a Change Order under this clause, unless Design-Builder gives County written notice within fifteen (15) Days requesting a Change Order and stating the date, circumstances, and source of the directive. Any notice by Design-Builder shall be given prior to commencement of any additional or modified Work allegedly required by County and deemed to be a Change Order.

10.15 Agreed and Unilateral Change Orders. A Change Order may be either an Agreed Change Order or a Unilateral Change Order.

10.15.1 Agreed Change Orders. An Agreed Change Order is one jointly executed by County and Design-Builder, in which each agrees to all of the terms of the amendment. The execution of an Agreed Change Order by County and Design-Builder constitutes the full, final, and complete settlement of all claims with regard to the Modifications contained in the Change Order.

10.15.2 Unilateral Change Order. A Unilateral Change Order is one issued by County without the agreement of Design-Builder. The issuance of a Unilateral Change Order does not prejudice any of Design-Builder’s rights to relief otherwise available under the Design-Build Documents. Design-
Builder may preserve such rights by submitting to County a written objection to the Unilateral Change Order, setting forth, in detail, the reasons for its objections and the contract provisions on which the objection is based, within thirty (30) Days of receipt of the Unilateral Change Order. **If Design-Builder does not submit a written objection within that time, Design-Builder shall be deemed to have accepted the terms of the Unilateral Change Order and waived all claims related to the Unilateral Change Order and the Unilateral Change Order shall have the full force and effect of an Agreed Change Order.**

10.16 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Stipulated Sum (GMP) or a change in the Contract Time, unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Design-Build Documents, except by amendment to the Agreement as set out in Section 10.7 above. **This requirement is of the essence of the Design-Build Documents.** Accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that County has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact such unjust enrichment, shall be the basis for any claim to an increase in the Stipulated Sum (GMP) or a change in the Contract Time.

10.17 The Parties’ agreement on the terms and provisions contained in any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order including, without limitation, all direct and indirect costs associated with such change and any and all adjustments to the Stipulated Sum and the Contract Time. In the event a Change Order increases the Stipulated Sum, Design-Builder shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Design-Build Documents.

**ARTICLE 11
ADMINISTRATION OF CHANGE ORDER PROPOSALS**

11.1 A single Change Order may be issued, adjusting both Contract Time and Stipulated Sum, where both arise from the same claim or request.

11.2 As soon as practical, allowing time for review after receipt of any Change Order Proposal submitted by Design-Builder, County shall respond to Design-Builder in writing as to County’s response: (a) accepting Design-Builder’s proposal; (b) rejecting the same; (c) initiating negotiations with Design-Builder concerning the proposed cost adjustment; or (d) requesting additional information.

11.3 When an agreement has been reached concerning the adjustment, County shall accept Design-Builder’s Change Order Proposal, or any subsequently revised Change Order Proposal issued pursuant to negotiation, by endorsing the Change Order Proposal and returning it to Design-Builder. A Change Authorization is effective upon receipt and constitutes Design-Builder’s notice to proceed with the changed Work, entitling Design-Builder to adjust the cost of the Work in the
approved Schedule of Values and on succeeding Pay Applications, as the changed Work is completed.

11.4 County may, in writing, issue a Notice to Proceed for any portion of the Work in a Change Order for which final adjustment in cost and/or time has not been finalized. The Notice to Proceed letter may have a not-to-exceed cost amount for any or all portions of the Change Order. This amount is not to be exceeded without the prior written approval by County.

11.5 County will authorize Design-Builder to prepare a Change Order to include specific change items for which time and cost impacts have been agreed, and will state where the funding for the Change Order is derived.

11.6 When County wishes to order changes in the Work, County shall submit to Design-Builder a Change Order Request consisting of a description of the request, including such Drawings and Specifications as are reasonably necessary to inform Design-Builder of the nature of the change. This provision does not limit County's right to order a Unilateral Change Order.

11.7 When Design-Builder considers that any written instruction or interpretation of the Design-Build Documents issued by County constitutes a change in the Work affecting the cost of the Work, Design-Builder shall so notify County in writing as soon as possible, but not later than fifteen (15) Days after receipt of the instruction or interpretation, and shall submit a Change Order Proposal to County as soon as possible thereafter, but not later than thirty (30) Days after issuance of the notice. Design-Builder's failure to meet either of these time requirements shall constitute waiver of any and all claims related to such instruction, interpretation, or notice.

11.8 If Design-Builder claims that additional cost or time is involved because of the occurrence of concealed conditions, Design-Builder shall promptly give County written notice of its intent to submit a Claim and shall proceed immediately to document all increased costs or time delays actually incurred as a result. Such notice shall be given as soon as Design-Builder becomes aware that such circumstances exist, but not later than thirty (30) Days after the Design-Builder's discovery of the circumstance giving rise to the Claim. This notice shall identify the circumstances giving rise to the additional cost or time delay, the elements of cost affected, and the claimed contractual basis for entitlement to relief. Design-Builder shall certify that the Claim is made in good faith and that the supporting data is current, accurate, and complete to the best of its knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which Design-Builder believes County is liable. Failure to certify a Claim will result in a determination that no Claim has been filed. Such notices shall be accompanied by sufficient written evidence to document the occurrence of an estimated cost impact, but the full amount of the Claim need not be stated at the time the initial claim notice is given to County. This notice shall include the following additional elements: (a) an analysis of the relevant Design-Build Document provisions; (b) with description of the facts; and (c) the statement of why the particular facts warrant compensation under the terms of the Agreement. Design-Builder and County recognize and agree that it is beneficial to each other to identify factors affecting Design-Builder's cost of performance, and to take prompt action to control them. Therefore, it is agreed that Design-Builder shall not be entitled to a cost adjustment unless the required notice is submitted timely and Design-Builder hereby waives all claims for which such notice is not given.

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11.9 Claims for adjustment of the cost of the Work based on the occurrence of concealed conditions shall be made in the format suitable to County and submitted to County no later than thirty (30) Days after the cessation of the circumstances giving rise to the Claim. The submittal shall set forth Design-Builder's proposed cost adjustment. Within thirty (30) Days after completion of the Work in question, Design-Builder shall submit in writing to County any additional elements of the Claim, such as supporting cost or pricing data; legal analysis, if appropriate; an expert's opinion, if appropriate; and formal request for decision, if appropriate. No such Claim shall be valid unless these additional elements are so submitted, and Design-Builder hereby waives all such invalid claims.

11.10 No Claim shall be allowed for an adjustment under this or any other provision of the Agreement if asserted after County makes or tenders Final Payment under the Agreement.

11.11 Pending final determination of the total cost of a Change Order to County, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the Parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, County shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Stipulated Sum on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article A.4 of the Terms and Conditions to the Agreement.

11.12 When County and Design-Builder reach agreement concerning the adjustments in the Stipulated Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

ARTICLE 12
PRICING CHANGE ORDER WORK

12.1 A change which involves either an increase or decrease to the Stipulated Sum may be marked up or down for reasonable profit. However, any General Conditions set forth in Exhibit D to the Agreement associated with the change shall be separately itemized and justified.

12.2 Adjustments of the Stipulated Sum on account of changes in the Work may be determined by any of the methods listed in Articles 10 and 11, above. Design-Builder's profit and home office overhead for Change Orders, exclusive of Design-Builder's General Conditions costs (see Exhibit D to the Agreement), shall not exceed ten percent (10%).

12.3 Labor Costs

12.3.1 Labor costs consist of the total cost of all labor, including supervision up to the level of Project Manager, itemized to show the number of man-hours by trade and classification, unburdened hourly rates, and total labor cost.

12.3.2 Labor Burden covers Social Security, Retirement, Pension and/or other payroll taxes of like nature imposed by local, state, and/or federal governments upon Design-Builder (when it performs the Work). Labor Burden shall be charged on changes at a fixed rate of forty-five percent (45%) of the applicable wage or salary.
12.4 If unit prices are stated in the Design-Build Documents, or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that the application of such unit prices to quantities of Work proposed will cause substantial inequity to County or Design-Builder, the applicable unit prices shall be equitably adjusted.

ARTICLE 13
MISCELLANEOUS

13.1 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in accordance with the Design-Build Documents will survive Final Payment, completion and acceptance of the Work, as well as termination for any reason. All duties imposed upon Design-Builder by reason of termination including, without limitation, the duty to assign subcontracts and contracts with Contractor(s), Subcontractors, vendors and Suppliers, shall likewise survive the termination of the Agreement.

13.2 Independent Design-Builder Status. The Design-Build Documents create an independent contractor relationship between County and Design-Builder, and neither Party’s employees, agents, or representatives shall be considered employees, agents, or representatives of the other Party.

13.3 Third Party. Nothing contained in the Design-Build Documents shall create a contractual relationship between County and any third party under which any third party may seek relief against County. However, it is understood and agreed that County is an intended third-party beneficiary of all professional services, all subcontracts, purchase orders, and other agreements between Design-Builder and third parties in connection with the Work and Project. Design-Builder shall incorporate the obligations of the Agreement into its respective subcontracts, supply agreements, and purchase orders.

13.4 No Waiver of Sovereign Immunity. Nothing herein shall be construed as a waiver of County’s sovereign immunity, to the extent it is applicable to the Agreement, but this provision shall not preclude Design-Builder from having the right to exercise the remedies described in the Agreement.

13.5 Confidentiality of Security Systems. Design-Builder warrants and represents that Design-Builder shall not communicate or disclose any information in connection with any security system installed or to be installed at the Project Site, or in connection with any building or facility impacted by the Work or Project or any of County’s electronic information or telecommunication systems, except: (a) with prior written consent of County; (b) information that was in the public domain prior to the date of the Agreement; (c) information which becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of Design-Builder; or (d) as may be required to perform the Work or by any applicable legal requirement.

13.5.1 Design-Builder, at any time upon request of County, shall immediately return and surrender to County all copies of materials, records, notices, memoranda, recordings, mock-ups, drawings (including Drawings), specifications (including Specifications, Shop Drawings, Samples, addenda, documents, and any other materials furnished by County to Design-Builder.

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13.5.2 Design-Builder shall specifically cause all Subcontractors or any other person or entity performing any services for or at the request of Design-Builder in connection with any Work or the Project to warrant and represent all items set forth in this Section 13.5.
# EXHIBIT D

## GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1.
PROJECT MANUAL AND PLANS

Plans and Specifications will be developed by Design-Builder under the terms of the Design-Build Documents and with the approval of County. If a Project Manual is created, the organization of the Project Manual into divisions, sections, and articles and the arrangements of the Drawings shall not control Design-Builder in dividing the Work among Subcontractors in establishing the extent of Work to be performed by any trade.

ARTICLE 2.
PREVAILING WAGE

2.1 This is a public works contract, pursuant to Chapter 2258, Texas Government Code, and shall become a part of the Agreement and must be complied with. Throughout the term of the Design-Build Contract, Design-Builder shall adhere to the applicable, prevailing minimum wage rates for building construction projects published by the U.S. Department of Labor for projects undertaken in Bexar County, Texas which was in effect as of the Effective Date of the Agreement to which this Exhibit D is attached and made a part of (the "Minimum Rate Schedule").

2.2 In further compliance with Section 2258.023(b), Texas Government Code, Design-Builder shall forfeit as a penalty to County the sum of sixty dollars ($60.00) for each laborer, worker, or mechanic employed for each Day, or part of the Day, that the worker is paid less than the rates indicated in the Minimum Rate Schedule.

2.3 Design-Builder will submit certified payroll records covering all pay periods up to four (4) weeks prior to the date of submission, which have not been previously submitted, with each Pay Application. No Pay Application will be considered for payment until such time as the payroll copies are received and reviewed by County's Construction Manager. These payrolls will contain the name, address, and social security number of each laborer, worker, or mechanic employed at the Project Site in connection with the Project, as well as the worker's correct work classification, rates of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. The payrolls shall be accompanied by a statement signed by the employer or its agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable wage determination contained in these specifications and that the classifications set forth for each laborer or mechanic conform with the Work performed by the laborer or mechanic. Design-Builder shall be responsible for the submission of copies of payrolls of all Subcontractors. Design-Builder and its Subcontractors are required to keep a copy of each payroll submitted for a minimum of three (3) years from ending date of the workweek.

2.4 County will review payrolls and notify Design-Builder of any discrepancies noted. Any discrepancy in the payrolls may be cause for withholding further payments to Design-Builder until such discrepancies are properly corrected.
ARTICLE 3
EQUAL EMPLOYMENT OPPORTUNITIES

Design-Builder will not discriminate in any personnel action including hiring, promotion, suspension, termination, sick leave, work assignments, holidays and vacation on the bases of race, color, religion, national origin, sex, marital preference, age, handicap, or political belief or affiliation.

ARTICLE 4
CALENDAR DAYS

4.1 The Agreement is a calendar day-oriented Agreement. After beginning the Work, Design-Builder shall prosecute same continuously and diligently for and during the number of the Days identified in the Project Schedule, a copy being attached as Exhibit B to the Agreement, and the Design-Build Documents, during which period of time Design-Builder binds and obligates itself at all times to employ sufficient staff to diligently complete the Work and improvements and to deliver same to County in a completed, undamaged, and clean condition.

4.2 A Day is defined as any weekday including Saturday, Sunday, and County’s official holidays. A Day also includes the Federal, State, County and City-recognized holidays and days in which weather or other job site conditions are not favorable to perform the Work. Upon written request, County’s Designated Representative will provide Design-Builder with a list of the then-current County holidays. Nothing in this Section 4.2 shall be construed as prohibiting Design-Builder from working on Saturdays if it so desires, but it is required to give the County’s Designated Representative and County’s Construction Manager at least the prerequisite forty-eight (48) hours prior written notice of its intent to perform work on Saturday for coordination purposes. Work on Sundays or holidays will not be permitted except for good cause and then only with the prior written permission of County’s Designated Representative, which shall not be unreasonably withheld.

4.3 In computing any time period set forth in the Design-Build Documents, the first day of the period shall not be included, but the last day shall be.

ARTICLE 5
ADVERSE WEATHER CLAIMS

Claims for additional time as a result of adverse weather conditions will only be considered for weather conditions which are abnormal for the period of time and when such weather conditions had an adverse effect on the schedule of construction. Design-Builder shall document adverse weather conditions on a monthly basis and submit to County’s designated representative no later than the fifteenth (15th) Day of the following month. Any request for extra time due only to days which prevent Work on critical activities of any scheduled Work, shall be considered. If no request is submitted for any given month, it will be assumed that no time was lost and the Contract Time will not be subsequently adjusted.
ARTICLE 6
NORMAL WEATHER DAYS

For the purposes of the Agreement, the following days per month of adverse weather are considered normal and no adjustment to Contract Time will be made unless the number of adverse days exceeds the days indicated for the specific month and the Work in question is dependent on appropriate weather conditions:

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<thead>
<tr>
<th>Month</th>
<th>Days</th>
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<tbody>
<tr>
<td>January</td>
<td>2 Days</td>
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<td>February</td>
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<td>March</td>
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<td>September</td>
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<td>October</td>
<td>3 days</td>
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<td>November</td>
<td>3 days</td>
</tr>
<tr>
<td>December</td>
<td>3 days</td>
</tr>
</tbody>
</table>

Design-Builder shall keep a current log on-site documenting the weather conditions at the Project Site for each Day of the Agreement.

ARTICLE 7
WAIVER

No extension of time shall be deemed a waiver by County of its right to terminate the Agreement for abandonment or delay by Design-Builder for full responsibility for performance of the Work and obligations required by the Design-Build Documents. Once the Work has begun, Design-Builder shall properly staff the Project in a continuous manner and proceed with all diligence to complete the Project within the Contract Time. Design-Builder must work continuously and will not be allowed to stop activity on any weekday unless due to adverse weather or for reason pre-approved in writing by County’s Designated Representative.

ARTICLE 8
FIELD ALTERATION REQUEST

Additional work, corrections, or changes in the Project Manual and Plans shall be accomplished only after written approval on a “Field Alteration Request” form.

ARTICLE 9
DRUG-FREE WORKPLACE

Design-Builder is required to provide a drug-free workplace and shall maintain a written drug abuse plan. A copy of the plan must be kept on file by Design-Builder and will be made available and subject to review upon request by County’s representatives. The drug-free workplace program will meet minimum requirements as established by The Associated General Contractors of America.
EXHIBIT F

COUNTY’S REQUIREMENTS FOR CRIMINAL BACKGROUND CHECKS
Identogo Appointment Instructions:

1. Contractor/Applicant is responsible for Identogo service fee.
2. To schedule an appointment applicant must visit the following link: https://ueenroll.identogo.com/
3. To get started enter the HR service code: 11H2V2

![Image of Identogo service code entry]

4. Select: Schedule or Manage Appointment
   Applicant will fill out questionnaire.

![Image of Identogo scheduling options]

5. In the section titled Personal Questions, the applicant will be asked Do you have an Authorization Code [Coupon Code] that you will be using as a method of payment? 
   A check is required. Names on the card must be present to be accepted. For tracking purposes please provide your receipt via email to the Bexar County Badge via email to: countyaccessbadge@bexar.org

6. Applicant/Contractor will make non-refundable payment to Identogo at time of service. (Money Order, Cashier’s check, Credit card - name of person on credit card must be present to be accepted). For tracking purposes please provide your receipt via email to the Bexar County Badge via email to: countyaccessbadge@bexar.org

7. Applicant/Contractor is responsible for following up with the Bexar County Badge office for clearance status by emailing countyaccessbadge@bexar.org and informing them you need a clearance status and providing: Name of Company, Name of Applicant, Project, Name of Bexar County Project Manager (3) five business days after fingerprint session is completed.
EXHIBIT F

STIPULATED SUM
STIPULATED SUM PROPOSAL

Proposal of: Joeris General Contractors
(Company Name)

Ref.: Bexar County Dual Diagnosis Residential Facility (DDRF) Treatment Facility Intake Center and Campus Renovations

7.1 Cost Limitation:

County has established a Project Cost Limitation of $22,000,000.00 for the Project which includes the costs for the Guaranteed Maximum Price (Cost of the Work, General Conditions, Design, Construction Phase Fee, Allowances, Alternates, Unit Prices and Construction Contingency).

A. DESIGN-BUILD SERVICES

a. Total estimated Cost of Work $16,468,464.00
b. Design-Builder's proposed General Conditions cost $1,675,000.00
c. Design-Builder's proposed Construction Phase Fee $1,025,000.00
d. Design-Builder Design Fee Proposal $1,625,536.00

Total Stipulated Sum (a+b+c+d) $20,794,000.00

7.2 Delivery Schedule:

Design-Builder, having carefully examined the County's delivery schedule as described in Section 5.3 of the RFQ/P-RFP solicitation, agrees to furnish the design and construction of the Project based on the aforementioned delivery schedule. Any proposed revision or modifications to the delivery schedule, or listed deliverables, are as listed below:

______________________________________________________________________________

______________________________________________________________________________

TERM OF CONTRACT: The completion time for this Project must not exceed five hundred forty-five (540) calendar days, or less, beginning upon Notice to Proceed.
EXHIBIT G

Bexar County American Rescue Plan Act (ARPA) Contract Addendum

This Bexar County American Rescue Plan Act (ARPA) Contract Addendum (the “Addendum”) is between Joeris General Contractors, LLC. (referred to in this Addendum as “Contractor” and in the Agreement as “Design-Builder”) and the County of Bexar (“County”) and is incorporated by reference into the attached contract entitled Design-Build Agreement (the “Agreement”) including all attachments, exhibits and Design-Build Documents (collectively, the “Design-Build Contract”) between Contractor and County. Contractor and County may be referred to singularly as “Party” and collectively as the “Parties”. All capitalized terms not defined in this Addendum shall have the meaning ascribed to them in Article A.1 of Exhibit “A” to the Agreement.

Notice: The Agreement to which this Addendum is attached is made using federal assistance provided to the County by the US Department of Treasury (“Treasury”) under the American Rescue Plan Act (“ARPA”) Sections 602(b) and 603(b) of the Social Security Act, Pub. L. No-117-2 (March 11, 2021).

The following terms and conditions apply to Contractor as a contractor of County, according to the County’s U.S. Department of Treasury Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions signed on May 21, 2021 and attached to this Addendum; by ARPA and its implementing regulations; and as established by the Treasury. Contractor agrees to be bound by the Award Terms and Conditions, as applicable, and such other rules, regulations, or requirements as Treasury may reasonably impose at or subsequent to the execution of the Agreement.

1. Remedies; Termination for Cause and for Convenience. 2 CFR Part 200 Appendix II (A) and 2 Part CFR 200 Appendix II (B). County may terminate the Agreement in whole or in part, in accordance with 2 CFR § 200.339, or as provided in the Agreement. If Contractor materially fails, as determined by County, to comply with any term of the Agreement, a Federal statute or regulation, an assurance in a Bexar County plan, application, a notice of award, or elsewhere, County may take one or more of the following actions: a) Temporarily withhold payments pending correction of the deficiency or default by the contractor; b) Disallow all or part of the cost of the activity or action not in compliance; and require immediate repayment of such disallowed costs. C) Withhold further awards from Contractor; d) Other actions as discussed in the Agreement; e. Exercise other rights and remedies that may be legally available as determined by County to comply with the terms of the Agreement.


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a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor’s legal duty to furnish information.

d. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers’ representatives of the Contractor’s commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and
orders.

g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Agreement or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Minority and Women Business Enterprises. (If applicable to this Agreement). Contractor hereby agrees to comply with the following when applicable: The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), when applicable. Accordingly, the Contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

a. Including qualified women's business enterprises and small and minority businesses on solicitation lists;

b. Assuring that women's enterprises and small and minority businesses are solicited whenever they are potential sources;

c. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business, and women's business enterprises;

d. Where the requirement permits, establishing delivery schedules which will encourage participation by women's business enterprises and small and minority business;

e. Using the services and assistance of the Small Business Administration, and
the U.S. Office of Minority Business Development Agency of the Department of Commerce; and f. If any subcontracts are to be let, requiring the prime Contractor to take the affirmative steps in a through e above.

4. Suspension and Debarment. (Applies to all purchases)

a. This Agreement is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Contractor is required to verify that none of Contractor’s principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

b. The Contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c. This certification is a material representation of fact relied upon by Bexar County. If it is later determined that the Contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d. The Contractor agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C throughout the term of the Agreement. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

*Contractors must sign the certification on Attachment B of this Addendum*

5. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended. (Applies to all purchases.) Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

*Purchases over $100,000 - Contractors must sign the certification attached to this Addendum*

6. Access to Records. (Applies to all purchases.)

a. The Contractor agrees to provide the County, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives
access to any books, documents, papers, and records of the Contractor which are
directly pertinent to this Contract for the purposes of making audits, examinations,
excorts, and transcriptions. The Contractor agrees to permit any of the foregoing
parties to reproduce by any means or to copy excerpts and transcriptions as reasonably
needed, and agrees to cooperate with all such requests.

b. The Contractor agrees to provide Treasury or authorized representatives access to
construction or other work sites pertaining to the work being completed under the
Agreement.

c. No language in this Agreement is intended to prohibit audits or internal reviews by the
Treasury or the Comptroller General of the United States.

7. **Rights to Inventions Made Under a Contract or Agreement.** Contracts or agreements
for the performance of experimental, developmental, or research work shall provide for the
rights of the Federal Government and the recipient in any resulting invention in accordance
with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small
Business Firms Under Government Grants, Contracts and Cooperative Agreements," and
any applicable implementing regulations.

8. **Reporting.** Contractor will provide information for reporting purposes as described in the
Compliance and Reporting Guidance available on the Treasury’s website at
https://home.treasury.gov/policyissues/coronavirus/assistance-for-state-local-and-tribal-
governments/state-and-local-fiscal-recovery-funds. This includes, but is not limited to,
labor reporting as outlined in the attached Attachment C.

9. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 through 3708).**
(Appplies only to purchases over $100,000, when laborers or mechanics are used.) Where
applicable, all contracts in excess of $100,000 that involve the employment of mechanics or
laborers shall include a provision for compliance with 40 U.S.C. 3702 and 3704 of the
Contract Work Hours and Safety Standards Act, as supplemented by Department of Labor
regulations (29 CFR part 5). Under Section 3702 of the Act, each contractor shall be
required to compute the wages of every mechanic and laborer on the basis of a standard
workweek of 40 hours. Work in excess of the standard workweek is permissible provided
that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay
for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C.
3704 are applicable to construction work and provides that no laborer or mechanic shall be
required to work in surroundings or under working conditions which are unsanitary,
hazardous or dangerous. These requirements do not apply to the purchases of supplies or
materials or articles ordinarily available on the open market, or contracts for transportation
or transmission of intelligence.

a. In the event of any violation of the clause set forth in paragraph (1) of this section the
Contractor and any subcontractor responsible therefor shall be liable for the unpaid
wages. In addition, such Contractor and subcontractor shall be liable to the United
States for liquidated damages. Such liquidated damages shall be computed with respect
to each individual laborer or mechanic, including watchmen and guards, employed in
violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for
each calendar day on which such individual was required or permitted to work in excess
of the standard workweek of forty hours without payment of the overtime wages
required by the clause set forth in paragraph (1) of this section.

b. The County shall upon its own action or upon written request of an authorized
representative of the Department of Labor withhold or cause to be withheld, from any
moneys payable on account of work performed by the Contractor or subcontractor
under the Agreement or any other Federal Contract with the same prime Contractor, or
any other federally assisted contract subject to the Contract Work Hours and Safety
Standards Act, which is held by the same prime Contractor, such sums as may be
determined to be necessary to satisfy any liabilities of such Contractor or subcontractor
for unpaid wages and liquidated damages as provided in the clause set forth in
paragraph (2) of this section.

c. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in
paragraphs (1) through (4) of this section, and also a clause requiring the subcontractors
to include these clauses in any lower tier subcontracts. The prime Contractor shall be
responsible for compliance by any subcontractor or lower tier subcontractor with the
clauses set forth in paragraphs (1) through (4) of this section.

10. Davis-Bacon Act (40 U.S.C. §§ 3141-3148). The County and Contractor agree all
transactions regarding the Design-Build Contract shall be done in compliance with the
Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and §§ 3146-3148) and the requirements of
29 C.F.R. Part 5 as may be applicable. The Contractor shall comply with 40 U.S.C. §§
3141-3144, and §§ 3146-3148 and the requirements of 29 C.F.R. Part 5 as applicable.

i. Davis-Bacon Act, as amended (40 U.S.C. §§3141-3148). When required by
Federal program legislation, all prime construction contracts in excess of
$2,000 awarded by non-Federal entities must include a provision for
compliance with the Davis-Bacon Act (40 U.S.C. §§3141-3144, and §§ 3146-
3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5,
"Labor Standards Provisions Applicable to Contracts Covering Federally
Financed and Assisted Construction").

ii. In accordance with the statute, contractors must be required to pay wages to
laborers and mechanics at a rate not less than the prevailing wages specified in
a wage determination made by the Secretary of Labor. In addition, contractors
must be required to pay wages not less than once a week.

iii. The non-Federal entity must place a copy of the current prevailing wage
determination issued by the Department of Labor in each solicitation. The
decision to award a contract or subcontract must be conditioned upon the
acceptance of the wage determination.

iv. The Act provides that the Contractor must be prohibited from inducing, by any
means, any person employed in the construction, completion, or repair of public
work, to give up any part of the compensation to which he or she is otherwise
entitled. The non-Federal entity must report all suspected or reported violations
to the Federal awarding agency.

v. This subsection is applicable only to the extent the agreement pertains to construction work.

11. Clean Air Act & Federal Water Pollution Control Act. (Applies to purchases of more than $150,000.)

a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

b. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

c. The Contractor agrees to report each violation of the Clean Air Act and the Water Pollution Control Act to the County of Bexar and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

d. Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance.

12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. (Huawei and ZTE) Contractor is prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

13. Buy USA - Domestic Preference for Certain Procurements Using Federal Funds. Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For
purposes of this section: (1) “Produced in the United States” means, for iron and steel products, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

14. **Procurement of Recovered Materials:** (applies only if the work involves the use of materials)

a. In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: i. Competitively within a timeframe providing for compliance with the Contract performance schedule; ii. Meeting Contract performance requirements; or iii. At a reasonable price.

b. Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines website, [https://www.epa.gov/ash/procurement-guideline-cpg-program](https://www.epa.gov/ash/procurement-guideline-cpg-program).

c. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

15. **Publications.** Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIRN] awarded to [name of Recipient] by the U.S. Department of the Treasury.”

16. **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for your employees when operating company-owned, rented or personally owned vehicles. 13. Decreasing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and establish workplace safety policies to decrease accidents caused by distracted drivers.

17. **Copeland Anti-Kickback Act.**

a. The Contractor must report all suspected or reported violations to the County and Treasury. Contractor must comply with the Copeland “Anti Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”).

b. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
c. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these clauses.

d. A breach of the clauses above may be grounds for termination of the Agreement, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

e. The Act provides that the Contractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
Attachment A to Addendum
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The undersigned certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in section (b) of this certification;

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default; and

(e) Will submit to Bexar County information about each proceeding that occurs subsequent to this application/proposal and during the term of any agreement resulting from this RFP or during the recordkeeping period for any such agreement that:

(1) Is in connection with this award;
(2) Reached its final disposition during the most recent five year period; and
(3) Is one of the following:
   i. A criminal proceeding that resulted in a conviction, as defined below;
   ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;
   iii. An administrative proceeding, as defined below, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damage in excess of $100,000; or
   iv. Any other criminal, civil, or administrative proceeding if:
      1. It could have led to an outcome described in this section (e) paragraph (3) items (i) – (iii) of this award term and condition;
2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

(4) For purposes of section (e) of this certification the following definitions apply:

i. An “administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. A “conviction”, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

Where the undersigned is unable to certify to any of the statements in this certification, undersigned shall attach an explanation of why it cannot provide said certification.

The undersigned further agrees and certifies that it will include the below clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Subcontracts/Lower Tier Covered Transaction,” without modification, in all subcontracts and in all solicitations for subcontracts:

"CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—SUBCONTRACTS/LOWER TIER COVERED TRANSACTIONS

(1) The prospective lower tier participant/subcontractor certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant/subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

LOWER TIER PARTICIPANT/SUBCONTRACTOR:

[Signature]
Printed Name: ____________________________________________
Title: ___________________________________________________
Date: ________________________________________________
This certification is a material representation of fact upon which reliance is placed when Bexar County awards the contract. If it is later determined that undersigned knowingly rendered an erroneous certification, in addition to any other remedies available to the Federal Government, Bexar County may terminate this agreement for cause or default.

Vendor: Joeris General Contractors, LLC

By: [Signature]

Name: Gary L. Joeris

Title: Chief Executive Officer

Date: January 12, 2024
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The undersigned certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in section (b) of this certification;

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default; and

(e) Will submit to Bexar County information about each proceeding that occurs subsequent to this application/proposal and during the term of any agreement resulting from this RFP or during the recordkeeping period for any such agreement that:

(1) Is in connection with this award;
(2) Reached its final disposition during the most recent five year period; and
(3) Is one of the following:
   i. A criminal proceeding that resulted in a conviction, as defined below;
   ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;
   iii. An administrative proceeding, as defined below, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damage in excess of $100,000; or
   iv. Any other criminal, civil, or administrative proceeding if:
      1. It could have led to an outcome described in this section (e) paragraph (3) items (i) – (iii) of this award term and condition;
2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

(4) For purposes of section (e) of this certification the following definitions apply:

i. An "administrative proceeding" means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. A "conviction", for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

Where the undersigned is unable to certify to any of the statements in this certification, undersigned shall attach an explanation of why it cannot provide said certification.

The undersigned further agrees and certifies that it will include the below clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Subcontracts/Lower Tier Covered Transaction,” without modification, in all subcontracts and in all solicitations for subcontracts:

"CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—SUBCONTRACTS/LOWER TIER COVERED TRANSACTIONS"

(1) The prospective lower tier participant/subcontractor certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant/subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

LOWEST TIER PARTICIPANT/SUBCONTRACTOR:

[Signature]
Printed Name: __________________________________________
Title: __________________________________________________
Date: __________________________________________________
This certification is a material representation of fact upon which reliance is placed when Bexar County awards the contract. If it is later determined that undersigned knowingly rendered an erroneous certification, in addition to any other remedies available to the Federal Government, Bexar County may terminate this agreement for cause or default.

Vendor: Joeris General Contractors, LLC

By: [Signature]

Name: Gary L. Joeris

Title: Chief Executive Officer

Date: January 12, 2024
Attachment B to Addendum
CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is material representation of fact on which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

STATEMENT FOR LOAN GUARANTEES AND LOAN INSURANCE

The undersigned states, to the best of its knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
Vendor:  Joeris General Contractors, LLC

By: 

Name: Gary L. Joeris

Title: Chief Executive Officer

Date: January 12, 2024
Attachment C to Addendum
DAVIS-BACON CERTIFICATION

For the project associated with the Agreement ("Project"), JOERIS GENERAL CONTRACTORS, LLC. certifies that it, along with its subcontractors, will pay laborers and mechanics performing services on the Project wages at rates not less then those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on project of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in construction law (commonly known as "baby Davis-Bacon Act").

JOERIS GENERAL CONTRACTORS, LLC.

By: ________________________________

(Printed Name) Gary L. Joeris

(Title) Chief Executive Officer

(Date) January 12, 2024
Attachment D to Addendum
Workforce Continuity Plan - Outline

I. Introduction

Purpose and scope of the plan
1. Key assumptions
2. Roles and responsibilities

II. Workforce Analysis

1. Critical roles and required skills/competencies
2. Assessment of overall workforce demographics and potential loss scenarios (retirement, competition, etc.)
3. Identification of mission critical and at-risk roles

III. Knowledge Transfer

1. Cross-training strategies and definition of critical knowledge, skills and abilities to transfer
2. Phased retirement and succession planning
3. Documentation of processes and procedures

IV. Recruitment and Development

1. Strategies to build a talent pipeline through partnerships, internships, etc.
2. Leadership development and acceleration planning for high-potential employees
3. Recruitment strategies to find qualified candidates with required skills

V. Retention Strategies

1. Competitive compensation, benefits and flexibility
2. Employee engagement, culture and recognition programs
3. Learning and development opportunities

VI. Workforce Flexibility and Scalability

1. Contingent workforce and outsourcing arrangements
2. Policies to support variable workload demands
3. Regional capacity balancing

VII. Implementation and Monitoring

1. Communication plan
2. Timeline, metrics and responsibilities
3. Periodic review and adjustment of the plan