

ConsensusDocs® 415

STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND DESIGN-BUILDER (Lump Sum Price)

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN-BUILDER'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. CONTRACT TIME
7. CONTRACT PRICE
8. CHANGES IN THE WORK
9. PAYMENT
10. INDEMNITY, INSURANCE, AND BONDS
11. SUSPENSION, NOTICE TO CURE, AND TERMINATION
12. DISPUTE MITIGATION OR RESOLUTION
13. MISCELLANEOUS
14. CONTRACT DOCUMENTS

ARTICLE 1 AGREEMENT

Job Number: []

Account Code: []

This Agreement is made this [] Day of [] in the year [], by and between the

OWNER: City of Killeen
101 N. College Street
Killeen, Texas 76541

and the

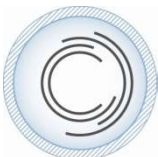
DESIGN-BUILDER: Synergy Commercial Construction, LLC
114 Halmar Cove
Georgetown, Texas 78628

PROJECT: CSI Aviation Headquarters, Phase 2
Address: 8101 Clear Creek Road and Reese Creek Road Killeen, Texas

ARTICLE 2 GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP Each Party agrees to act on the basis of trust, good faith, and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.1 Neither Design-Builder nor any of its agents or employees shall act on behalf of or in the name of Owner unless authorized in writing by Owner's Representative.



2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest; (b) promptly disclose to the other Party any conflicts of interest which may arise. Each Party warrants it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Design Professional, Subcontractors, Subsubcontractors, Suppliers or Others, to secure preferential treatment.

2.3 DESIGN PROFESSIONAL Architectural and engineering services shall be procured from licensed, independent design professionals retained by Design-Builder or furnished by licensed employees of Design-Builder, as permitted by the Law. The person or entity providing architectural and engineering services shall be referred to as Design Professional. If Design Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between Design-Builder and Design Professional.

2.3.1 STANDARD OF CARE Design Professional shall furnish and provide the architectural and engineering services necessary to design the Project in accordance with Owner's requirements, as outlined in Owner's Program and other relevant data defining the Project. The architectural and engineering services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity, during the time in which the Services are provided.

2.4 DEFINITIONS

2.4.1 "Agreement" means this ConsensusDocs 415 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder (Lump Sum Price), as modified, amendments, exhibits, addenda, and attachments made part of this Agreement upon its execution.

2.4.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.4.3 A "Change Order" is a written order signed by Owner and Design-Builder after execution of this Agreement, indicating changes in the scope of the Work or Contract Time, including substitutions proposed by Design-Builder and accepted by Owner.

2.4.4 "Construction Schedule" is the document prepared by Design-Builder that specifies the dates on which Design-Builder plans to begin and complete various parts of the construction phase services Work, and the Project, including dates on which information and approvals are required from Owner.

2.4.5 The "Contract Documents" consist of those documents identified in §14.1.

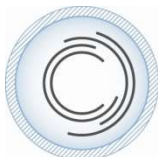
2.4.6 The "Contract Time" is the period between the Date of Commencement and total time authorized to achieve Final Completion.

2.4.7 "Day" means calendar day.

2.4.8 "Date of Commencement" is as provided for in §6.1.

2.4.9 "Defective Work" is any portion of the Work not in conformance to the requirements of the Contract Documents.

2.4.10 "Final Completion" occurs on the date when Design-Builder's obligations under this Agreement are complete and accepted by Owner and final payment becomes due and payable.



2.4.11 A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up.

2.4.12 "Interim Directive" is any written order containing Work instructions that is signed by Owner after execution this Agreement and before Substantial Completion to the Work directed by Owner.

2.4.13 "Law" means a federal, state or local law, ordinance, code, rule, or regulation applicable to the Work with which Design-BUILDER must comply that are enacted as of the Agreement date.

2.4.14 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, subsubcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.4.15 "Overhead" shall mean (a) payroll costs and other compensation of Design-BUILDER's employees in Design-BUILDER's principal and branch offices; (b) general and administrative expenses of Design-BUILDER's principal and branch offices including charges against Design-BUILDER for delinquent payments; and (c) Design-BUILDER's capital expenses, including interest on capital used for the Work.

2.4.16 The "Owner" is the person or entity identified in ARTICLE 1, and includes Owner's representative.

2.4.17 The "Owner's Program" is a description of Owner's objectives, budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements, together with Schematic Design Documents which shall include drawings, outline specifications, and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the Worksite.

2.4.18 The "Parties" are collectively Owner and Design-BUILDER.

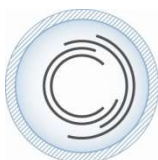
2.4.19 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which Design-BUILDER is to perform the Work under this Agreement. It may also include improvements to be undertaken by Owner or Others.

2.4.20 "Project schedule" A schedule that shows the timing and sequencing of the design and construction required to meet the time criteria set forth in Owner's Program. The Project includes the Construction Schedule and is coordinated with design phase service activities.

2.4.21 A "Subcontractor" is a person or entity retained by Design-BUILDER as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or any separate contractor employed by Owner or any separate contractor's subcontractors.

2.4.22 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Design-BUILDER's control. This date shall be confirmed by a certificate of Substantial Completion signed by The Parties.

2.4.23 A "Subsubcontractor" is a party or entity who has an agreement with a Subcontractor or other Subsubcontractor, or Supplier to perform any portion of the Work or to supply material or equipment.



2.4.24 A "Supplier" is a person or entity retained by Design-Builder to provide material and equipment for the Work.

2.4.25 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.26 The "Work" is the design services procured in accordance with §3.1, the construction services provided in accordance with §3.2, additional services in accordance with §3.11, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.4.27 "Worksite" means the geographical area of the Project location mentioned in ARTICLE 1 where the Work is to be performed

ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES

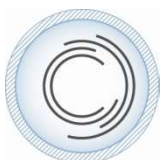
3.1 DESIGN SERVICES Pursuant to a mutually agreeable schedule, Design-Builder shall submit for Owner's written approval, as applicable, Design Development Documents or Construction Documents, based on the Contract Documents in existence at the time of the execution of this Agreement or any further development of Contract Documents that have been approved in writing by Owner.

3.1.1 If required, the Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. When Design-Builder submits the Design Development Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Design Development Documents approved by Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion.

3.1.2 The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws, or regulations enacted at the time of their preparation. When Design-Builder submits the Construction Documents, Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents or the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Construction Documents approved by Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion. Construction shall be in accordance with the approved Construction Documents. One set of these documents shall be furnished to Owner before commencing construction.

3.1.3 OWNERSHIP OF DOCUMENTS

3.1.3.1 OWNERSHIP OF TANGIBLE DOCUMENTS Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by Design-Builder, its Design Professional, Subcontractors, or consultants and distributed to Owner for this Project, upon the making of final payment to Design-Builder or in the event of termination under



ARTICLE 11, upon payment for all sums due to Design-Builder pursuant to ARTICLE 11. Owner's acquisition of the copyright shall be subject to Owner's making of all payments required by this Agreement.

3.1.3.2 COPYRIGHT The Parties agree that Owner shall obtain ownership of the copyright of all Documents. Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by §3.1.3.1 and the payment of the fee reflecting the agreed value of the copyright set forth below:

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with Design-Builder.

3.1.3.3 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 11, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under §3.1.3.1, provided payment has been made pursuant to §3.1.3.1

3.1.3.4 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Owner's use of the Documents without Design-Builder's involvement or on other projects is at Owner's sole risk, except for Design-Builder's indemnification obligations, and Owner shall indemnify and hold harmless Design-Builder, its Design Professional, Subcontractors, and consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.

3.1.3.5 DESIGN-BUILDER'S USE OF DOCUMENTS Where Design-Builder has transferred its copyright interest in the Documents under §3.1.3.1, Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

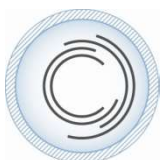
3.1.3.6 Design-Builder shall obtain from its Design Professional, Subcontractors, and consultants rights and rights of use that correspond to the rights given by Design-Builder to Owner in this Agreement, and Design-Builder shall provide evidence that such rights have been secured.

3.2 CONSTRUCTION SERVICES

3.2.1 Construction will commence upon the issuance by Owner of a written notice to proceed which shall not be issued until and unless all permits and permission are issued by any governmental unit having control over same.

3.2.2 In order to complete the Work, Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, construction labor, materials, tools, and subcontracted items.

3.2.3 COMPLIANCE WITH LAW Design-Builder shall give all notices and comply with all Laws at its own costs. Design-Builder shall be liable to Owner for all loss, cost, and expense attributable to any acts or omissions by Design-Builder, its employees, subcontractors, and agents resulting from the failure to comply with Laws, including fines, penalties, or corrective measures. However, liability



under this subsection shall not apply if notice to Owner was given, and advance approval by appropriate authorities, including Owner, is received.

3.2.3.1 CHANGES IN LAW The Contract Price or Contract Time, or both shall be equitably adjusted by Change Order for additional costs or time needed resulting from any change in Law, including increased taxes, enacted after the date of this Agreement

3.2.4 Design-Builder shall maintain the Schedule of Work. This schedule shall indicate the dates for the start and completion of the various stages of the construction, including the dates when information and approvals are required from Owner. It shall be revised as required by the conditions of the Work.

3.2.5 Design-Builder shall obtain and Owner shall pay, in addition to the Contract Price, for the building permits necessary for the construction of the Project.

3.2.6 Design-Builder shall provide periodic written reports to Owner on the progress of the Work in such detail as is required by Owner and as agreed to by The Parties.

3.2.7 Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Before discontinuing Work in an area, Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

Design-Builder shall prepare and submit to Owner either final marked up as-builts drawings that generally document how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to this Agreement.

3.3 CONSTRUCTION SCHEDULE Design-Builder shall prepare and submit a Schedule of Work for Owner's acceptance and written approval. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from Owner. The Schedule shall be revised on a monthly basis or as mutually agreed by the Parties.

3.4 SAFETY OF PERSONS AND PROPERTY

3.4.1 SAFETY PRECAUTIONS AND PROGRAMS Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

3.4.2 Design-Builder shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.4.2.1 its employees and other persons at the Worksite;

3.4.2.2 materials, supplies, and equipment stored at the Worksite for use in performance of the Work; and

3.4.2.3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.



3.4.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE Design-Builder shall designate an individual at the Worksite in the employ of Design-Builder who shall act as Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by Design-Builder in writing to Owner, the designated safety representative shall be Design-Builder's project superintendent. Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to Owner. When Design-Builder is required to file an accident report with a public authority, Design-Builder shall furnish a copy of the report to Owner.

3.4.4 Design-Builder shall provide Owner with copies of all notices required of Design-Builder by Law. Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

3.4.5 Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of Design-Builder, or anyone for whose acts Design-Builder may be liable, shall be promptly remedied by Design-Builder. Damage or loss attributable to the acts or omissions of Owner or Others and not to Design-Builder shall be promptly remedied by Owner.

3.4.6 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Design-Builder's safety program, may require Design-Builder to stop performance of the Work or take corrective measures satisfactory to Owner, or both. If Design-Builder does not adopt corrective measures, Owner may perform them and reduce the amount of the Contract Price by the costs of the corrective measures. Design-Builder agrees to make no claim for damages, for an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion based on Design-Builder's compliance with Owner's reasonable request.

3.5 EMERGENCIES In any emergency affecting the safety of persons or property, Design-Builder shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price, the Date of Substantial Completion, or the Date of Final Completion, on account of emergency work shall be determined as a Change Order.

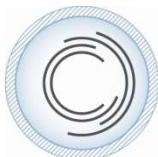
3.6 HAZARDOUS MATERIAL

3.6.1 Design-Builder shall not be obligated to commence or continue Work until all Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.6.2 If after commencing the Work, Hazardous Material is discovered at the Project, Design-Builder shall be entitled to immediately stop Work in the affected area. Design-Builder shall report the condition to Owner and, if required, the government agency with jurisdiction.

3.6.3 Design-Builder shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction. Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Work.

3.6.4 If Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the date of Substantial Completion.



3.6.5 To the extent not caused by the negligent or intentionally wrongful acts or omissions of Design-Builder, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, Owner shall indemnify and hold harmless Design-Builder, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, to the extent permitted pursuant to §6.5, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.7 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Design-Builder, Subcontractors, Owner or Others, shall be maintained at the Project by Design-Builder and made available to Owner and Subcontractors.

3.7.1 During Design-Builder's performance of the Work, Design-Builder shall be responsible for the proper handling, application, storage, removal, and disposal of all materials brought to the Worksite by Design-Builder. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by Design-Builder if such materials or substances are required by the Contract Documents.

3.7.2 §3.6 shall survive the completion of the Work under this Agreement or any termination of this Agreement.

3.8 WARRANTY

3.8.1 Design-Builder warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion.

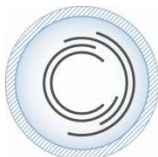
3.8.2 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. To the extent products, equipment, systems, or materials incorporated in the Work are specified by Owner but purchased by Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by Design-Builder, Design-Builder shall assist Owner in pursuing warranty claims. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

3.8.3 Design-Builder shall secure required certificates of inspection, testing, or approval and deliver them to Owner.

3.8.4 Design-Builder shall collect all written warranties and equipment manuals and deliver them to Owner in a format directed by Owner.

3.8.5 With the assistance of Owner's maintenance personnel, Design-Builder shall direct the checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.

3.9 CORRECTION OF WORK WITHIN ONE YEAR



3.9.1 Before Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, if any Defective Work is found, Owner shall promptly notify Design-Builder in writing. Unless Owner provides written acceptance of the condition, Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Design-Builder or give Design-Builder an opportunity to test or correct Defective Work as reasonably requested by Design-Builder, Owner waives Design-Builder's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of Work is complete. Correction periods shall not be extended by corrective work performed by Design-Builder.

3.9.3 If Design-Builder fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due Design-Builder. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, Design-Builder shall pay the difference to Owner.

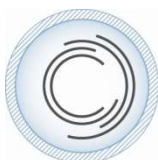
3.9.4 Design-Builder's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Design-Builder and allow Design-Builder an opportunity to correct the Work if Design-Builder elects to do so. If Design-Builder elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Design-Builder does not elect to correct the Work, Owner may have the Work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from Design-Builder, Owner shall promptly provide Design-Builder with an accounting of the correction costs it incurs.

3.9.5 If Design-Builder's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Design-Builder's other obligations under the Contract Documents.

3.9.7 Before final payment, at Owner's option and with Design-Builder's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.10 CONFIDENTIALITY Design-Builder shall treat as confidential and not disclose to third-persons, except Subcontractors, Subsubcontractors, and Design Professional as is necessary for the performance of the Work, or use for its own benefit any of Owner's developments, confidential information, know-how, discoveries, production methods, and the like that may be disclosed to Design-Builder or which Design-Builder may acquire in connection with the Work. Owner shall treat as confidential information all of Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to Owner in connection with the performance of this Agreement. The Parties shall each specify those items



to be treated as confidential and shall mark them as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

3.11 ADDITIONAL SERVICES Design-Builder shall provide or procure the following Additional services upon the request of Owner. A written agreement between The Parties shall define the extent of such Additional services. Such Additional services shall be considered a Change in the Work, unless they are specifically included in §3.1 or §3.2.

3.11.1 Assisting in the developing Owner's Program, establishing the Project budget, investigating sources of financing, general business planning, and other information and documentation as may be required to establish the feasibility of the Project;

3.11.2 Consultations, negotiations, and documentation supporting the procurement of Project financing;

3.11.3 Surveys, site evaluations, legal descriptions, and aerial photographs;

3.11.4 Appraisals of existing equipment, existing properties, new equipment, and developed properties;

3.11.5 Soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having jurisdiction over the Project;

3.11.6 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits;

3.11.7 Investigation or making measured drawings of existing conditions or the verification of Owner-provided drawings and information;

3.11.8 Artistic renderings, models, and mockups of the Project or any part of the Project or the Work;

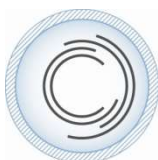
3.11.9 Inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project;

3.11.10 Interior design and related services including procurement and placement of furniture, furnishings, artwork, and decorations;

3.11.11 Making revisions to design documents after they have been approved by Owner when revisions are due to causes beyond the control of Design-Builder. Causes beyond the control of Design-Builder do not include acts or omissions on the part of Subcontractors, Subsubcontractors, or Design Professional;

3.11.12 Design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained, or work to be performed, by Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not a part of this Agreement;

3.11.13 Estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of Design-Builder;



3.11.14 The premium portion of overtime work ordered by Owner including productivity impact costs, other than that required by Design-Builder to maintain the Schedule of Work;

3.11.15 Out-of-town travel by Design Professional in connection with the Work, except between Design Professional's office, Design-Builder's office, Owner's office, and the Project site;

3.11.16 Obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial startup;

3.11.17 Services for tenant or rental spaces not required by this Agreement;

3.11.18 services requested by Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice;

3.11.19 Except when Design Professional is a party to the proceeding, serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project;

3.11.20 document reproduction exceeding the limits provided for in this Agreement;

3.11.21 providing services relating to Hazardous Material discovered at the Worksite;

3.11.22 acting as a Green Building Facilitator as identified in the ConsensusDocs 310 Green Building Addendum or separate addenda, which, at a minimum, shall include: (a) coordinating and facilitating the achievement of elected green measures and green status, such as achieving Leadership in Energy and Environmental Design "LEED" certification; (b) identifying, preparing, and submitting necessary documentation for elected green status; and (c) identifying project participants responsible to complete physical and procedural green measures;

3.11.23 performing formal commissioning services; and

3.11.24 other services as agreed to by the Parties and identified in an attached exhibit.

3.12 DESIGN-BUILDER'S REPRESENTATIVE Design-Builder shall designate a person who shall be Design-Builder's authorized representative. Design-Builder's Representative is Dan Bradley

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER Owner's responsibilities under this article shall be provided with reasonable detail and in a timely manner.

4.2 WORKSITE INFORMATION To the extent Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, Owner shall provide at Owner's expense and with reasonable promptness:

4.2.1 information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.2.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law;

4.2.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and



4.2.4 any other information or services requested in writing by Design-Builder which are required for Design-Builder's performance of the Work and under Owner's control.

4.3 RESPONSIBILITIES DURING DESIGN

4.3.1 Owner shall review and approve further development of the drawings and specifications as set forth in ARTICLE 3.

4.4 RESPONSIBILITIES DURING CONSTRUCTION

4.4.1 Owner shall review the Construction Schedule, timely approve milestone dates set forth, and timely respond to its obligations.

4.4.2 If Owner becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Owner shall give prompt written notice to Design-Builder. The failure of Owner to give such notice shall not relieve Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.4.3 Owner shall have no contractual obligations to Subcontractors, suppliers, or Design Professional.

4.4.4 Owner shall provide insurance for the Project as provided in ARTICLE 10.

4.5 ELECTRONIC DOCUMENTS If Owner requires that The Parties exchange documents and data in electronic or digital form, before any such exchange, The Parties shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate agreement, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

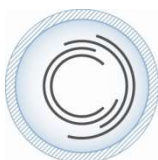
4.6 Owner's Representative is Derek Mayo, Garver, LLC. 3755 S. Capital of Texas Highway, Suite 325, Austin, Texas 78704. Owner's representative shall: (a) be fully acquainted with the Project; (b) agree to furnish the information and services required of Owner in a timely manner; and (c) have the authority to bind Owner in all matters requiring Owner's approval, authorization or written notice. If Owner changes its representative or the representative's authority as listed above, Owner shall notify Design-Builder in writing in advance.

ARTICLE 5 SUBCONTRACTS

5.1. RETAINING SUBCONTRACTORS Design-Builder shall not retain any Subcontractor or Supplier to whom Owner has a reasonable and timely objection, provided that Owner agrees to increase the Contract Price for any additional costs incurred by Design-Builder as a result of such objection. Owner may propose subcontractors to be considered by Design-Builder. Design-Builder shall not be required to retain any subcontractor to whom Design-Builder has a reasonable objection.

5.2. MANAGEMENT OF SUBCONTRACTORS Design-Builder shall be responsible for the management of Subcontractors in the performance of their work.

5.3. CONTINGENT ASSIGNMENT OF SUBCONTRACT AGREEMENTS



5.3.1. If this Agreement is terminated, each subcontract agreement shall be assigned by Design-Builder to Owner, subject to the prior rights of any surety, provided that:

5.3.1.1. this Agreement is terminated by Owner pursuant to §11.2 or §11.3; and

5.3.1.2. Owner accepts such assignment, after termination by notifying the Subcontractor and Design-Builder in writing, and assumes all rights and obligations of Design-Builder pursuant to each subcontract or supply agreement.

5.3.2. If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

5.4. BINDING OF SUBCONTRACTORS AND SUPPLIERS Design-Builder agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its Subsubcontractors and significant Suppliers) to all the provisions of this Agreement and the Contract Documents' applicable provisions to that portion of the Work.

ARTICLE 6 CONTRACT TIME

6.1. DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below TBD. The Work shall proceed in general accordance with the Project Schedule which may be amended in accordance with this Agreement.

6.2. SUBSTANTIAL COMPLETION/FINAL COMPLETION

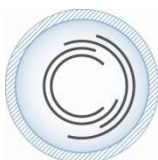
6.2.1. Substantial Completion of the Work shall be achieved in two hundred ten (210) Days from the Date of Commencement. Unless otherwise specified, the Work shall be finally complete within ninety (90) Days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

6.2.2. Time is of the essence with regards to the obligations of the Contract Documents.

6.2.3. Unless otherwise instructed by an Interim Directive, Design-Builder shall not knowingly commence the Work before the effective date of insurance required to be provided by Design-Builder.

6.3. DELAYS AND EXTENSIONS OF TIME

6.3.1. If Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Design-Builder, Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of Design-Builder include, but are not limited to, the following: (a) acts or omissions of Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions; (n) government imposition of tariffs which result in unprofitability, economic hardship, market fluctuations, or delay in availability to Design-Builder. Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 8.



6.3.2. In addition, if Design-Builder incurs additional costs as a result of a delay that is caused by acts or omissions of Owner or Others, changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work, encountering Hazardous Materials unanticipated by Design-Builder or concealed or unknown conditions, government imposition of tariffs which result in unprofitability, economic hardship, market fluctuations, or delay in availability to Design-Builder, delay authorized by Owner pending dispute resolution, or suspension by Owner under §ARTICLE 11, Design-Builder shall be entitled to an equitable adjustment in the Contract Price subject to §6.5.

6.3.3. In the event delays to the project are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays.

6.4. SUBSTANTIAL COMPLETION

6.4.1. SUBSTANTIAL COMPLETION The Parties agree that this Agreement shall not provide for the imposition of liquidated damages based on the Date of Substantial Completion.

6.4.2. FINAL COMPLETION Owner and Design-Builder agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Final Completion.

6.4.2.1. Design Builder understands that the Date of Final Completion is not attained, Owner will suffer damages which are difficult to determine and accurately specify. Constructor agrees that the Date of Substantial Completion is not attained, Design Builder shall pay Owner FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) as liquidated damages for each Day that Final Completion extends beyond the Date of Final Completion. The liquated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Date of Final Completion.

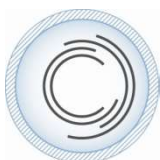
~~6.4.2.2.~~

6.5. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in §6.4 and excluding losses covered by insurance required by the Contract Documents, Owner and Design-Builder agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency.

6.5.1. The following items of damages are excluded from this mutual waiver:

6.5.2. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. Owner and Design-Builder shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 CONTRACT PRICE



The Contract Price is Five Million One Hundred Eighty Four Thousand, Eight Hundred Thirty-Three and 30/100 Dollars dollars (\$5,184,833.30) subject to adjustment as provided in ARTICLE 8.

ARTICLE 8 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished without invalidating this Agreement by Change Order, Interim Directive, or a minor change in the Work, subject to the limitations stated in the Contract Documents.

8.1. CHANGE ORDERS

8.1.1. Design-Builder may request or Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of adjustment to the Contract Price or the Date of Substantial Completion or the Date of Final Completion. All such changes in the Work shall be authorized by applicable Change Order, and processed in accordance with this article. Each adjustment in the Contract Price resulting from a Change Order shall clearly separate the amount attributable to Design services.

8.1.2. The Parties shall negotiate an appropriate adjustment to Contract Price or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Said Change Orders shall be at Design-Builder's cost plus 8.0% general conditions and 5.0% profit. Acceptance of the Change Order and any adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.

8.1.3. NO OBLIGATION TO PERFORM Design-Builder shall not be obligated to perform changes in the Work until a Change Order has been executed or a written Interim Directive has been issued.

8.2. INTERIM DIRECTIVE

8.2.1. Owner may issue an Interim Directive directing a change in the Work before agreeing on an adjustment, if any, in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services or directing Design-Builder to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Design-Builder shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.

8.2.2. The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, arising out of Interim Directive. As the changed work is completed, the Design Builder shall submit its costs for such work with its Application for Payment beginning with the next Application for Payment within thirty (30) Days of the issuance of the Interim Directive. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work.

8.2.3. If the Parties agree upon the adjustments in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives issued since the last Change Order.

8.3. MINOR CHANGES IN THE WORK



8.3.1. Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion; and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment, or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

8.3.2. Design-Builder shall promptly inform Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by Design-Builder.

8.4. CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Design-Builder shall stop affected Work after the concealed or unknown condition is first observed and give prompt written notice of the condition to Owner. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Design-Builder is to proceed. Design-Builder shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the condition, including any dispute about its existence or nature, shall be determined as provided in this ARTICLE 8.

8.5. DETERMINATION OF COST

8.5.1. An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

8.5.1.1. unit prices set forth in this Agreement or as subsequently agreed;

8.5.1.2. a mutually accepted, itemized lump sum; or

8.5.1.3. COST OF THE WORK Cost of the Work as defined by this §8.5.1.3 plus eight percent(8%) for Overhead and five percent 5% for profit. "Cost of the Work" shall include the following costs reasonably incurred to perform a change in the Work:

8.5.1.3.1. Labor wages directly employed by Design-Builder performing the Work;

8.5.1.3.2. Salaries of Design-Builder's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;

8.5.1.3.3. Cost of applicable employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under Design-Builder's standard personnel policy, insofar as such costs are paid to employees of Design-Builder who are included in the Cost of the Work in §8.5.1.3.1 and §8.5.1.3.2;

8.5.1.3.4. Reasonable transportation, travel, and hotel expenses of Design-Builder's personnel incurred in connection with the Work;



8.5.1.3.5. Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling;

8.5.1.3.6. Payments made by Design-Builder to Subcontractors for performed Work;

8.5.1.3.7. Fees and expenses for design services procured or furnished by Design-Builder

8.5.1.3.8. Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value of such items used, but not consumed that remain the property of Design-Builder;

8.5.1.3.9. Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Design-Builder or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Design-Builder or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment;

8.5.1.3.10. Cost of the premiums for all insurance and surety bonds which Design-Builder is required to procure or deems necessary, and approved by Owner including any additional premium incurred as a result of any increase in the cost of the Work;

8.5.1.3.11. Sales, use, gross receipts or other taxes, tariffs, or duties related to the Work for which Design-Builder is liable;

8.5.1.3.12. Permits, fees, licenses, tests, and royalties;

8.5.1.3.13. Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work, provided that such did not arise from Design-Builder's negligence.

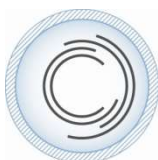
8.5.1.3.14. Water, power, and fuel costs necessary for the changed Work;

8.5.1.3.15. Cost of removal of all nonhazardous substances, debris, and waste materials;

8.5.1.3.16. Costs directly incurred to perform a change in the Work which are reasonably inferable from the Contract Documents for the changed Work

8.5.1.3.17. DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Design-Builder, all cash discounts shall accrue to Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work;

8.5.1.3.18. COST AND SCHEDULE ESTIMATES Design-Builder shall use reasonable skill and judgment in the preparation of a cost estimate or schedule for a change to the Work, but does not warrant or guarantee their accuracy.



8.5.1.3.19. Cost of the Work pursuant to §8.5.1.3 is determined net of savings from the change. Design-Builder's Overhead and profit shall be added to any net increase in Cost of the Work. No Overhead and profit shall be applied to any net decrease in the Cost of the Work that is less than ten (10) percent of the Contract Price. Overhead and profit shall be applied to any net decrease ten (10) percent or more. Design-Builder shall maintain a documented, itemized accounting evidencing expenses and savings.

8.5.2. If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Owner or Design-Builder, such unit prices shall be equitably adjusted.

8.5.3. If Owner and Design-Builder disagree as to whether work required by Owner is within the scope of the Work, Design-Builder shall furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations. If Owner issues a written order for Design-Builder to proceed, Design-Builder shall perform the disputed work and Owner shall pay Design-Builder fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. Design-Builder's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.6. CHANGES NOTICE For any claim for an increase in the Contract Price or an extension in the Date of Substantial Completion or the Date of Final Completion, Design-Builder shall give Owner written notice of the claim within twenty-one (21) Days after the occurrence giving rise to the claim or within twenty-one (21) Days after Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by Owner, but which do not proceed, shall be made within twenty-one (21) Days after the decision is made not to proceed. Thereafter, Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. Owner shall respond in writing denying or approving Design-Builder's claim no later than fourteen (14) Days after receipt of Design-Builder's documentation of claim. Owner's failure to so respond shall be deemed a denial of Design-Builder's claim. Any change in Contract Price or the Date of Substantial Completion or the Date of Final Completion resulting from such claim shall be authorized by Change Order.

8.7. INCIDENTAL CHANGES Owner may direct Design-Builder to perform incidental changes in the Work upon concurrence with Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner shall initiate an incidental change in the Work by issuing a written order to Design-Builder. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 9 PAYMENT

9.1. PROGRESS PAYMENT

9.1.1. Before submitting the first application for payment, Design-Builder shall provide a Schedule of Values satisfactory to Owner, consisting of a breakdown of the Contract Price, with a separate line item for Design services.



9.1.2. On or before the last Day of each month after the Work has commenced, Design-Builder shall submit to Owner an application for payment in accordance with the Schedule of Values based upon the Work completed and materials suitably stored on the Worksite or at other locations approved by Owner. Approval of payment applications for such stored materials shall be conditioned upon submission by Design-Builder of bills of sale and applicable insurance or such other procedures satisfactory to Owner to establish Owner's title to such materials, or otherwise to protect Owner's interest including transportation to the site.

9.1.3. Within seven (7) Days after receipt of each monthly application for payment, Owner shall give written notice to Design-Builder of Owner's acceptance or rejection, in whole or in part, of such application for payment. Owner shall pay directly to Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by Owner in accordance with Tex. Govt. Code Sec. 2251.001 *et seq.* If such application is rejected in whole or in part, Owner shall indicate the reasons for its rejection. If Owner and Design-Builder cannot agree on a revised amount, then, within fifteen (15) Days after its initial rejection in part of such application, Owner shall pay directly to Design-Builder the appropriate amount for those items not rejected by Owner for which application for payment is made, less amounts previously paid by Owner. Those items rejected by Owner shall be due and payable when the reasons for the rejection have been removed.

9.1.4. If Owner fails to pay Design-Builder at the time payment of any amount becomes due, then Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) Days after receipt of the notice by Owner, and after such seven (7) Day period, stop the Work until payment of the amount owing has been received.

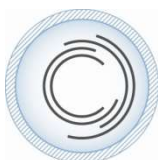
9.1.5. Payments due but unpaid pursuant to §9.1.3, less any amount retained pursuant to §9.2 or §9.3, may bear interest from the date payment is due pursuant to Tex. Govt. Code Sec. 2251.025.

9.1.6. Design-Builder warrants and guarantees that title to all Work, materials, and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to Owner upon receipt of such payment by Design-Builder free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to as "liens."

9.1.7. Owner's progress payment, occupancy, or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

9.1.8. Upon Substantial Completion of the Work, Owner shall pay Design-Builder the unpaid balance of the Contract Price, less a sum equal to one hundred fifty percent (150%) of Design-Builder's estimated cost of completing any unfinished items as agreed to between The Parties as to extent and time for completion. Owner thereafter shall pay Design-Builder monthly the amount retained for unfinished items as each item is completed.

9.1.9. **STORED MATERIALS AND EQUIPMENT** Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite, including applicable insurance, storage and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by Design-Builder of bills of sale and proof of required insurance, or such other procedures satisfactory to Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the site.



9.2. RETAINAGE Notwithstanding any contradicting terms in the Contract Documents, withholding and payment of retainage shall be pursuant to Tex. Govt. Code Ch. 2252. From each progress payment made before the time of Substantial Completion, Owner may retain five percent (5%) of the amount otherwise due after deduction of any amounts as provided in §9.3, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:

9.3. ADJUSTMENT OF AN APPLICATION FOR PAYMENT Owner may adjust or reject an application for payment or nullify a previously approved application for payment, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Design-Builder is responsible under this Agreement:

9.3.1. Design-Builder's repeated failure to perform the Work as required by the Contract Documents;

9.3.2. except as accepted by the insurer providing Builders Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by Design-Builder to Owner, or others to whom Owner may be liable;

9.3.3. Design-Builder's failure to pay either Design Professional, Subcontractor or Supplier following receipt of payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to Constructor in accordance with the terms of this Agreement;

9.3.4. Defective Work not corrected in a timely fashion;

9.3.5. reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the Contract Price is not sufficient to offset any direct damages that may be sustained by Owner as a result of the anticipated delay caused by Design-Builder;

9.3.6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work;

9.3.7. uninsured third-party claims involving the Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Contractor furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established; and

9.3.8. uninsured third-party claims involving Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Design-Builder furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Owner shall give written notice to Design-Builder, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by Design-Builder in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4. OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK
Portions of the Work that are completed or partially completed may be used or occupied by Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. Design-Builder shall not unreasonably withhold consent to partial occupancy or use. Owner



shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to Owner.

9.5. FINAL PAYMENT

9.5.1. Final payment, consisting of the unpaid balance of the Contract Price, shall be due and payable when the Work is fully completed. Before issuance of final payment, Owner may request satisfactory evidence that all payrolls, materials bills, and other indebtedness connected with the Work have been paid or otherwise satisfied.

9.5.2. In making final payment Owner waives all claims except for:

9.5.2.1. improper workmanship or defective materials appearing within one year after the date of Substantial Completion;

9.5.2.2. Work not in conformance with the Contract Documents; and

9.5.2.3. terms of any special warranties required by the Contract Documents.

9.5.3. In accepting final payment, Design-Builder waives all claims except those previously made in writing and which remain unsettled.

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1. INDEMNITY

10.1.1. TO THE FULLEST EXTENT PERMITTED BY LAW, DESIGN-BUILDER SHALL INDEMNIFY AND HOLD HARMLESS OWNER, OWNER'S OFFICERS, DIRECTORS, MEMBERS, CONSULTANTS, AGENTS, AND EMPLOYEES (THE INDEMNITEES) FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE, OTHER THAN TO THE WORK ITSELF AND OTHER PROPERTY REQUIRED TO BE INSURED UNDER §10.3, INCLUDING REASONABLE ATTORNEYS' FEES, COSTS, AND EXPENSES THAT MAY ARISE FROM THE PERFORMANCE OF THE WORK, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS OF DESIGN-BUILDER, SUBCONTRACTORS, OR ANYONE EMPLOYED DIRECTLY OR INDIRECTLY BY ANY OF THEM OR BY ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. DESIGN-BUILDER SHALL NOT BE REQUIRED TO INDEMNIFY OR HOLD HARMLESS THE INDEMNITEES FOR ANY NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS OF THE INDEMNITEES. DESIGN-BUILDER SHALL BE ENTITLED TO REIMBURSEMENT OF ANY DEFENSE COSTS PAID ABOVE DESIGN-BUILDER'S PERCENTAGE OF LIABILITY FOR THE UNDERLYING CLAIM TO THE EXTENT PROVIDED FOR BY THE SUBSECTION BELOW.

10.1.2. TO THE FULLEST EXTENT PERMITTED BY LAW, OWNER SHALL INDEMNIFY AND HOLD HARMLESS DESIGN-BUILDER, ITS OFFICERS, DIRECTORS, OR MEMBERS, SUBCONTRACTORS, OR ANYONE EMPLOYED DIRECTLY OR INDIRECTLY BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE, OTHER THAN PROPERTY INSURED UNDER §10.3, INCLUDING REASONABLE ATTORNEYS' FEES, COSTS, AND EXPENSES, THAT MAY ARISE FROM THE PERFORMANCE OF WORK BY OTHERS, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS OF OTHERS. OWNER SHALL BE ENTITLED TO REIMBURSEMENT OF ANY DEFENSE COSTS PAID ABOVE



OWNER'S PERCENTAGE OF LIABILITY FOR THE UNDERLYING CLAIM TO THE EXTENT PROVIDED FOR BY THE SUBSECTION ABOVE.

10.1.3. NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Design-Builder, anyone directly or indirectly employed by Design-Builder or anyone for whose acts Design-Builder may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design-Builder under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

10.2. DESIGN-BUILDER'S LIABILITY INSURANCE

10.2.1. Before commencing the Work and as a condition for payment, Design-Builder shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Design-Builder shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. Design-Builder's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

10.2.1.1. Employers' Liability Insurance

- (a) \$1,000,000 bodily injury by accident per accident
- (b) \$1,000,000 bodily injury by disease policy limit
- (c) \$1,000,000 bodily injury by disease per employee

10.2.1.2. Business Automobile Liability Insurance per accident \$1,000,000.

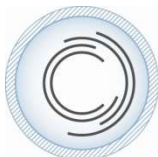
10.2.1.3. Commercial General Liability Insurance

- (a) Per occurrence \$1,000,000[]
- (b) General aggregate \$2,000,000
- (c) Products/completed operations aggregate \$2,000,000
- (d) Personal and advertising injury limit \$1,000,000

10.2.2. Employers' Liability, Business Automobile Liability, and Commercial General Liability coverage required under §10.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

10.2.3. Design-Builder shall maintain in effect all insurance coverage required under §10.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Design-Builder fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Design-Builder, or terminate this Agreement.

10.2.4. To the extent commercially available to Design-Builder and its current insurance company, insurance policies required under §10.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after



cancellation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Design-Builder shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §10.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Design-Builder shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

10.3. PROPERTY INSURANCE

10.3.1. Owner, before the Work is started,, shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Design-Builder, Subcontractors, Subsubcontractors, Suppliers, and Design Professional as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:

10.3.1.1. the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;

10.3.1.2. damage resulting from defective design, workmanship, or material;

10.3.1.3. coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant, or structures. Coverage shall be to the extent loss or damage arises out of Constructor's activities or operations at the Project;

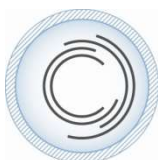
10.3.1.4. equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;

10.3.1.5. testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and

10.3.1.6. physical loss resulting from Terrorism.

10.3.2. The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §10.3.1 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Design-Builder has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Design-Builder shall provide a copy of the property policy or policies obtained in compliance with §10.3.1.

10.3.3. If Owner elects to purchase the property insurance required by this Agreement, including all of the same coverages and deductibles for the same duration specified in §10.3.1, then Owner shall give written notice to Design-Builder and the Design Professional before the Work is commenced and provide a copy of the property policy or policies obtained in compliance with §10.3.1. Owner may then provide insurance to protect its interests and the interests of the Design-Builder, Subcontractors,



Suppliers, and Subsubcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.

10.3.4. The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.

10.3.5. To the extent of the limits of Design-Builder's CGL specified in §10.2.1 or One Million dollars (\$1,000,000.00), whichever is more, Design-Builder shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of Design-Builder, Subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.3.6. RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to §10.3.1 until the Date of Final Completion.

10.4. ADDITIONAL GENERAL LIABILITY COVERAGE

10.4.1. Owner shall not require Design-Builder to purchase and maintain additional liability coverage.

10.4.2. If required by the above subsection, the additional liability coverage required of Design-Builder shall be:

☐ Additional Insured. Owner shall be named as an additional insured on Design-Builder's Commercial General Liability Insurance specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent or intentionally wrongful acts or omissions of Design-Builder, or those acting on Design-Builder's behalf, in the performance of Design-Builder's Work for Owner at the Worksite. The insurance of the Subcontractor shall be primary and non-contributory to any insurance available to the Additional Insureds.

☐ OCP. Design-Builder shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on Commercial General Liability Insurance specified, or limits as otherwise required by Owner.

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Design-Builder by increasing the contract price to correspond to the actual cost required to purchase and maintain the additional liability coverage.

Before commencing the Work, Design-Builder shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable.



10.5. ROYALTIES, PATENTS, AND COPYRIGHTS Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Design-Builder and incorporated in the Work. Design-Builder shall indemnify and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to indemnify and hold Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner.

10.6. PROFESSIONAL LIABILITY INSURANCE Design-Builder shall obtain, either itself or through Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be: Project Specific Coverage

written for not less than \$1,000,000.00 per claim and in the aggregate with a deductible not to exceed \$25,000.00. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by Design Professional. This coverage shall be continued in effect for two year(s) after the Date of Substantial Completion.

10.7. BONDING

10.7.1. Performance and Payment Bonds are required of Design-Builder. Such bonds shall be issued by a surety licensed in the state in which the Project is located and must be acceptable to Owner. Owner's acceptance shall not be withheld without reasonable cause.

10.7.2. Such Performance Bond shall be issued in accordance with Tex. Govt. Code Sec. 2252.064.

Such Performance Bond shall cover the cost to complete the Work, but shall not cover any damages of the type specified to be covered by the insurance pursuant to §10.2 and §10.3, whether or not such insurance is provided or in an amount sufficient to cover such damages.

10.7.3. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond. Design-Builder's payment bond for the Project, if any, shall be made available by Owner or Design-Builder upon Subcontractor's written request.

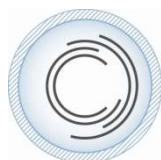
10.7.4. Design-Builder shall endeavor to keep its surety advised of changes within the scope of the initial Agreement potentially impacting the Contract Price or the Dates of Substantial Completion or Final Completion, though Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time.

ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION

11.1. SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1. Owner may order Design-Builder in writing to suspend, delay, or interrupt all or any part of the Work without cause for such period of time as Owner may determine to be appropriate for its convenience.

11.1.2. Adjustments caused by suspension, delay, or interruption shall be made for increases in the Contract Price or the Date of Substantial Completion or the Date of Final Completion. No adjustment shall be made if Design-Builder is or otherwise would have been responsible for the suspension, delay, or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.



11.2. NOTICE TO CURE A DEFAULT

11.2.1. If Design-Builder persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Construction Schedule, or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Design-Builder may be deemed in default.

If Design-Builder fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default, then Owner shall give Design-Builder a second notice to correct the default within a three (3) Day period.

11.2.2. After receiving Owner's written notice, if Design-Builder fails to promptly commence and continue satisfactory correction of the default, then Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing any reasonable means; (c) withhold payment due to Design-Builder; and (d) as Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge Design-Builder the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

11.2.3. In the event of an emergency affecting the safety of persons or property, Owner may immediately commence and continue satisfactory correction of a default without first giving written notice to Design-Builder, but shall give Design-Builder prompt notice.

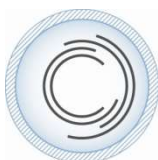
11.3. OWNER'S RIGHT TO TERMINATE FOR DEFAULT

11.3.1. **TERMINATION BY OWNER FOR DEFAULT** Upon expiration of the second notice for default period pursuant to §11.2.1 and absent appropriate corrective action, Owner may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under §12.2. If Owner's costs arising out of Design-Builder's failure to cure, including the costs to complete the Work and reasonable attorneys' fees, exceed the GMP, Design-Builder shall be liable to Owner for such excess costs. If Owner's costs are less than the GMP, Owner shall pay the difference to Design-Builder. If Owner exercises its rights under this section, upon the request of Design-Builder, Owner shall furnish to Design-Builder a detailed accounting of the costs incurred by Owner.

11.3.2. If Design-Builder files a petition under the bankruptcy code, this Agreement shall terminate if Design-Builder or Design-Builder's trustee rejects the Agreement or, if a default occurs and Design-Builder is unable to give adequate assurance of required performance; or (c) Design-Builder is otherwise unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.3.3. Owner shall make reasonable efforts to mitigate damages arising from Design-Builder's default, and shall promptly invoice Design-Builder for all amounts due.

11.4. **TERMINATION BY OWNER FOR CONVENIENCE** If Owner terminates this Agreement other than as set forth in §11.1.2, Owner shall pay Design-Builder for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs. In addition, Design-Builder shall be paid an amount calculated as set forth below: If Owner terminates this Agreement before commencing construction, Design-Builder shall be paid the unpaid balance of Design-Builder's design costs as set forth in the Schedule of Values. If Owner terminates this Agreement after commencing construction, Design-Builder shall be paid the unpaid balance of Design-Builder's design costs as set



forth in the Schedule of Values, the Construction services provided to date, reasonable attorneys' fees and costs related to termination,

11.4.3. Owner shall also pay to Design-Builder fair compensation, either by purchase or rental at the election of Owner, for all equipment retained. Owner shall assume and become liable for obligations, commitments, and unsettled claims that Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this article, Design-Builder shall cooperate with Owner by taking all steps necessary to accomplish the legal assignment of Design-Builder's rights and benefits to Owner, including the execution and delivery of required papers.

11.5. TERMINATION BY DESIGN-BUILDER

11.5.1. Seven (7) Days' after Owner's receipt of written notice from Design-Builder, Design-Builder may terminate this Agreement for any of the following reasons: if the Work has been stopped for a thirty (30) Day period through no fault of the Design-Builder: (a) under court order or order of other governmental authorities having jurisdiction, or (b) as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of Design-Builder, materials are not available; (c) Work is suspended by Owner for Convenience;

11.5.2. In addition, upon seven (7) Days written notice to Owner and an opportunity to cure within three (3) Days, Design Builder may terminate this Agreement if Owner: (a) fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project ;(b) assigns this Agreement over Design-Builder's reasonable objection; (c) fails to pay Design-Builder in accordance with this Agreement and Design-Builder stopped Work accordingly; or (d) otherwise materially breaches this Agreement.

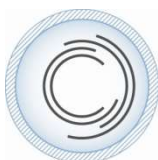
11.5.3. Upon termination by Design-Builder in accordance with §11.5.1, Design-Builder shall be entitled to recover from Owner payment for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs and reasonable damages.

ARTICLE 12 DISPUTE MITIGATION OR RESOLUTION

12.1. WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If Design-Builder continues to perform, Owner shall continue to make payments in accordance with the Agreement.

12.2. DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that a resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected below.

12.3. MEDIATION If direct discussions pursuant to §12.2 do not result in resolution of the matter and no dispute mitigation procedure is selected, upon mutual election by the Parties, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of



mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

12.4. BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

12.4.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

12.4.2. VENUE The Project location shall serve as the venue.

12.5. MULTIPARTY PROCEEDING The Parties agree that all Parties necessary to resolve a matter shall be Parties to the same dispute resolution procedure, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

12.6. RIGHTS Nothing in this article shall limit any rights or remedies that Design-Builder may have under law.

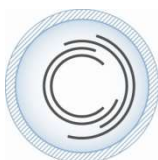
ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of The Parties and not for the benefit of any third party.

13.2. ASSIGNMENT Neither Owner nor Design-Builder shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Design-Builder than this Agreement. In the event of such assignment, Design-Builder shall execute all consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.

13.3. GOVERNING LAW The Law in effect at the location of the Project shall govern this Agreement.

13.4. SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.



13.5. NOTICE Unless changed in writing, a Party's address indicated in ARTICLE 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service

13.6. NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

13.7. TITLES AND GROUPINGS The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.8. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

ARTICLE 14 CONTRACT DOCUMENTS

14.1. CONTRACT DOCUMENTS The Contract Documents are as follows:

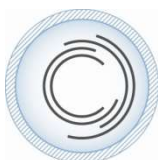
- (a) This Agreement;
- (b) Basis of Design/Owner's Program;
- (c) Owner-provided information pursuant to §3.6.3 and other Owner information identified as intended to be a contract document;
- (d) The Schematic Design Documents upon Owner approval pursuant to §2.4.17;
- (e) The Design Development Documents upon Owner approval pursuant to §3.1;
- (f) The Construction Documents upon Owner approval under §3.1;
- (g) Change Order, Interim Directives, and amendments issues in accordance with this Agreement.
- (h) CSI Austin Office Building Revised 2/3/25 bid sheet with descriptions, limitations, and exclusions attached thereto
- (i) Geotechnical Report to be issued prior to final design.

..

14.2. ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) design documents approved by Owner in order of the most recently approved; (d) information furnished by Owner pursuant to §4.1 or designated as a Contract Document in §ARTICLE 14; (e) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Where figures are given, they shall be preferred to scaled dimensions. Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

OWNER: City of Killeen, Texas

BY: _____ NAME: Kent Cagle TITLE: City Manager_____



DESIGN-BUILDER:
Synergy Commercial Construction, LLC

BY: _____ NAME Morgan McLaughlin TITLE: Manager

END OF DOCUMENT.





SYNERGY COMMERCIAL CONSTRUCTION

CULTIVATING RELATIONSHIPS ONE BUILDING AT A TIME

Project: CSI Aviation Headquarters
Address: Clear Creek Road and Reese Creek Rd
Date: 02/03/25

Contractor: Synergy Commercial Construction
Address: 1500 Rivery Blvd Suite 2280 Georgetown, TX 78628
Contact: Morgan
Email: mmclaughlin@synergycctx.com
Phone: 512-864-4856

	A/E Fees, PreCon & Soft Costs:			\$1,117,208.30		
	Geotechnical Report	1	LS	28,500.00	\$28,500.00	Boring samples, engineering and testing for both site and building
	Architectural/Structural/MEP Design	1	LS	364,300.00	\$364,300.00	See attached back-up for detail
	Civil Engineering	1	LS	173,000.00	\$173,000.00	See attached back-up for detail
	FF&E	1	LS	0.00	\$0.00	Excluded
	Pre-Construction Fee	1	LS	50,000.00	\$50,000.00	Flat fee for preconstruction services for both civil and Arch/Structural/MEP Design
	Tap Fees	1	LS	85,000.00	\$85,000.00	Allowance for Water & Sewer Tap Fees as well as Oncon electrical design with impact fees for transformer/service
	Design Contingency	1	LS	56,580.00	\$56,580.00	10% design contingency for fees above
	Insurance (General Liability)	1	LS	30,282.30	\$30,282.30	Excluded Builders Risk
	Payment & Performance Bond	1	LS	48,206.00	\$48,206.00	
	Construction Contingency	1	LS	0.00	\$0.00	no contingency on construction costs. This will have to be built in with value engineering
	Contractor's OH&P	1	LS	281,340.00	\$281,340.00	5% General Contractor Fee
	General Conditions:			\$292,625.00		30 week of construction to include a Project Manager, full time Superintendent, surveying, security fence, office trailer, storage trailer, permitting fees, & final cleaning
	Building Cost:			\$3,150,000.00		Sf pricing for a 9,000 office building with V/E finishes to be decided upon design to meet the budgets herein
	Site Costs:			\$625,000.00		Assumes roughly 18" of building pad removal & select fill import, 2" of HMA over 8" of flex base for the minimum required parking spaces, sanitary sewer tie in across GRK parking lot, water tie in per Kimley Horn's assumption based on city feedback and electrical assumptions based on site walk. Revised pricing assumes we can utilize minimal landscaping and site improvements to reduce the cost burden

SUMMARY			
	A/E DESIGN FEES, PRECON & SOFT COSTS:		\$1,117,208.30
	GENERAL CONDITIONS:		\$292,625.00
	TOTAL BUILDING COST:		\$3,150,000.00
	TOTAL SITE WORK:		\$625,000.00
	GRAND TOTAL:		\$5,184,833.30
CLARIFICATIONS			
Budget assumes we are able to use a standard Consensus Doc 415 "Design-Build Agreement and General Conditions Between Owner and Design-Builder (Lump Sum Price)			
A 9,000 s/f office building will be designed with V/E finishes for the main offices and executive offices			
Several design parameters will be taken into consideration as a result of our meeting on November 21st. Some of those considerations are: Mineral wool for added sound privacy in between offices, in floor wall urinals, extra wide 5' corridors, 1 large conference room and one small conference room, showers, nice entrance/lobby,			
Budget does not account for commercial kitchen (ie commercial hoods, ansul systems, shunt trips, gas for cooking equipment, grease trap, etc) nor does it account for kitchen appliances but it does account for a small breakroom kitchenette.			
CSI building signage designed / procured by owner/owner's vendor			
Access Control, Telecom/Data - infrastructure wiring & devices by contractor - buiding costs include pathways & pull strings to MDF/IDF rooms with plywood back boards			
Landscape & Irrigation to be desgin build with "Xeriscape" applicatons for low water and maintenance. Only immediate areas around the building will be landscaped with native vegetation for the rest of the 3 acre lot			
Primary electrical feeders brought the site by utility company so no costs have been figured for this			
Pricing does not include built in desks and/or built in cabinetry in any of the offices			
Pricing does not include appliances			
Pricing does not include perimeter fencing			
Pricing does not include furniture selections, equipment design, graphics and wayfinding selections			



January 31, 2025

Morgan McLaughlin
President
Synergy Commercial Construction
1500 Rivery Blvd, Ste 2280
Georgetown, TX 78628
Ph: (737) 3747102
mmclaughlin@synergycctx.com

**Re: Proposal for Professional Services
CSI Aviation Headquarters Office Building**

Dear Mr. McLaughlin,

McKinney York Architects (MYA) is pleased to provide this proposal to Synergy Commercial Construction (SCC) for Professional AE Services for the CSI Aviation Headquarters Office Building (the PROJECT). The new office building will be located at 8101 S Clear Creek Road, Killeen, Texas. CSI Aviation provides passenger charter and cargo air transportation, as well as medical flight services and aviation management and operations and this new office building will serve as their headquarters.

Initial Information

Project Scope

The PROJECT shall include the following:

1. New Office facility for the headquarters of CSI Aviation:
 - A. New building, approximately 9,000 gross square feet (GSF), on a single level.
 - B. Shared common spaces including small and large conference rooms, staff lounge, breakroom, and restrooms with showers.
 - C. Accessory spaces include mechanical room, IT/Data room, and 10x12 windowless "office" for uses as storage and Skiff room.
 - D. Separate executive suite.
 - E. One parking lot for use by guests and staff. On-site parking will accommodate approximately 40 parking spaces (5 for visitors and 35 for staff).
 - F. Associated equipment yards for mechanical equipment, transformer, and waste collection.
 - G. Exterior elements such as monument sign, and three flag poles.
 - H. Landscaping should be low maintenance using native plants and xeriscaping.

Project Budget

The budget for construction of this project has not yet been established. For the purposes of this proposal, we have used a construction budget of \$3,100,000 for the building excluding costs for civil, landscape and FFE scope.

Delivery Method

The Project will be constructed under a Design-Build (DB) delivery method. It is anticipated that the project will be constructed in a single phase and one bid package provided by the design team.

Code Compliance

1. The most restrictive requirements of the following codes and standards will govern:
 - A. International Building Code, 2021 edition (as amended)
 - B. International Energy Code, 2021 edition (as amended)
 - C. International Fire Code, 2021 edition (as amended in Chapter 11, Killeen Code of Ordinances)
 - D. International Mechanical Code, 2021 edition (as amended)
 - E. International Plumbing Code, 2021 edition (as amended)
 - F. National Electrical Code, 2020 edition (as amended)

Sub-Consultants to be Utilized for Project

- Structures – Structural Engineers
- Cleary Zimmerman – Mechanical, Electrical, Plumbing
- Datacom Design Group – IT, AV, Security, Acoustics Consultants

Phase 1- Programming

MYA and its sub-consultants shall provide the Programming services indicated below:

Program Validation

1. Provide verification and validation of items in current CSI Aviation Program of Requirements document sent in January 2025 and reflected in attached test fit plan.
2. Attend the following meetings and walk-throughs. MYA shall be responsible for taking meeting minutes at all meetings attended which will then be circulated with Owner and approved, becoming part of the Project documentation.
 - A. One (1) 1-HR introductory kick-off meeting with CSI Aviation leadership and staff, and other representatives to be included in the Programming phase to discuss values, goals, and project objectives.
 - B. One (1) 2-HR kick-off meeting with CSI Aviation leadership, Owner's Project Manager, and Design-Build team to discuss project scope, schedule, communication protocols.
 - C. Up to two (2) 1-HR meetings with local regulatory Authorities Having Jurisdiction:
 - (1) City of Killeen, Fire Department Services: one (1) meeting
 - (2) City of Killeen, Development Services Department: one (1) meeting
3. Provide the following conceptual planning services.
 - A. Develop the space and adjacency diagrams, and room data matrix for the building. Prepare two (2) conceptual design options.
4. Coordinate with CSI Aviation's third-party consultants including but not limited to civil, landscape and geotechnical consultants.
5. Provide the following civil engineering concept plan coordination services.
 - A. Attend up to two (2) meetings with Owner.
 - B. Attend one (1) pre-development meeting with City.
 - C. Respond to Owner comments and questions.
 - D. Prepare schematic utility layout.
 - E. Assist in review of time and fee schedules.

Budget/Procurement

Services for the Budget/Procurement are as follows.

1. Assist Design-Build Contractor in preparation of Preliminary Opinion of Probable Construction Cost (OPCC) for proposed concept design option and collaborate to develop/adjust scope of work to align with available funding/budget.

Phase 2 - Design Phase Basic Services

MYA and its sub-consultants shall provide the Basic Services indicated below and based on approved/selected Phase 1 Programming concept.

Meetings

MYA shall attend the following meetings. Meeting services include assisting Contractor with the preparation of meeting agenda and distribution of meeting minutes to attendees. Sub-consultants shall attend on an as-needed basis. MYA shall be responsible for taking meeting minutes at all design and coordination meetings attended which will then be circulated with Owner and approved, becoming part of the Project documentation.

1. Project Progress Meetings: Twelve (12) 1-HR meetings with CSI Aviation and Design Build Team during design phases of Phase 2.
2. Additional Design and FF&E Coordination Meetings: Three (3) 2-HR meetings total during design phases of Phase 2.
3. Presentation Meetings to CSI Aviation: One (1) 2-HR presentation meeting per project milestone through Final Construction Documents for a total of four (4) meetings. Presentation of finishes selections shall be incorporated into presentation meetings.

BIM Services

Construction drawings will be created in AutoDesk Revit version 2024. The AE team shall comply with the following standards.

- Services to coordinate and assist the Design-Build Contractor and/or subcontractors throughout the design phases of the project.

The following BIM services are excluded.

- Rework of the Project Model to accommodate parameter changes due to Owner initiated construction change orders, change orders for convenience, or AutoDesk Tandem coordination with TFC during design phases after a time where they would substantially affect the design effort.
- Maintaining separate models for core & shell, interior, and site for the duration of the design and construction phases. Instead, the model will be separated for the creation and delivery of the record BIM models.
- Maintaining separate model and annotation files, and the division of the BIM model into separate model and annotation files is excluded from this proposal. Tagging of BIM model components with hyperlinks and CSI Unifomat categories is excluded and shall be the responsibility of the Design-Build Contractor.
- Modeling of project site and Civil Engineering scope. Civil Engineering construction drawings will be created in AutoDesk Civil 3D 2022 or newer.

- Modeling of Landscape Architecture scope. Landscape Architecture construction drawings will be created in AutoCAD version 2022 or newer.

Testing and Inspections

The AE team will provide a list of necessary testing and inspections to the Owner for required third party consultants including commissioning, testing and balancing, environmental, construction materials testing, and geotechnical engineering. Management or supervision of the work of the third-party consultant in order to perform the work or on site during the work is excluded and shall be performed by the Design-Build Contractor.

Design Changes and Owner Approval

Revisions to previously approved designs or revisions to accommodate changes that are at odds with Owner's previous directions or approvals shall be considered a change in service and shall be compensated on a mutually agreeable negotiated basis.

This proposal understands or presumes the following progression of and efficiency of the services (for each design/construction package).

1. Schematic Design/Design Development progresses with reasonable convergence so that major plan, scope, or design approach changes are not made which significantly impact the design or its related construction cost and design effort.
2. Contract Documents progress with reasonable convergence so that plan, scope, or design approach changes are only minor in nature and do not significantly impact the design effort or construction cost.
3. A direction to proceed into the next (sequential) phase of services includes the implicit approval of accompanying floor plans and other designs created to that date (excepting written comments to the contrary). At each phase, MYA shall obtain Owner's written approval before proceeding to the next phase.

Deliverables, Design Phases

Deliverables by design phase are as follows.

1. Schematic Design Phase
 - A. Executive Summary Report revised from previous report provided
 - B. Drawings relevant to the scope of work
 - C. Two (2) total renderings, non-marketing quality
 - D. Outline specifications
 - E. Energy Efficient Architectural and Engineering Design Alternatives Evaluation
 - F. Building Systems narratives as applicable to scope of work
2. Design Development Phase
 - A. Executive Summary Report revised from previous report provided
 - B. Drawings relevant to the scope of work
 - C. Revised renderings from the previous phase plus one additional interior rendering.
 - D. Outline Building Systems drawings (MEP, Structural, IT/AV/Security) as applicable to scope of work
 - E. Short Form or Full Specifications
 - F. Building Systems narratives as applicable to scope of work
 - G. Data and Calculations for building envelope, MEP equipment list, mechanical load analysis, building pressure summary, sequence of operations and BMS criteria, electrical load analysis, lighting analysis, and plumbing and fire protection flow test.
 - H. Materials Palette/Board
3. Construction Documents Phase

- A. Executive Summary Report revised from previous report provided
- B. Drawings relevant to the scope of work
- C. Building Systems drawings (MEP, FA/FS, Structural, IT/AV/Security) as applicable to scope of work
- D. Full Specifications to complete Project Manual
- E. Building Systems narratives as applicable to scope of work
- F. Data and Calculations for building envelope, MEP equipment list, mechanical load analysis, building pressure summary, sequence of operations and BMS criteria, electrical load analysis, lighting analysis, and plumbing and fire protection flow test.

Phase 3 - Procurement and Construction Phase Basic Services

Deliverables and Services, Procurement and Construction Phases

Deliverables and services for the Procurement and Construction Phases are as follows.

1. Procurement Phase
 - A. Bid Documents
 - B. Accessibility Review including project registration and submission to RAS in accordance with TDLR requirements.
 - C. Assist Design-Build Contractor during subcontractor solicitation for development of GMP.
2. Construction Administration Phase
 - A. Requests for Information, Applications for Payment, Proposed Change Orders, and Unilateral Change Orders will be processed.
 - B. Up to two (2) submissions will be reviewed for each required submittal. Further submissions will be reviewed as an additional service.
 - C. MYA will assign the following services to be performed or supplied by the general contractor through specifications, including, but not limited to: Submittal Delivery Schedule, List of Subcontractors, List of Materials, General Contractor's & Maintenance Warranty, Work Progress Schedule with Schedule of Values, Guarantees, Project Sign, Operation & Maintenance Manuals.
 - D. Construction administration OAC meetings and construction observation site visits by the Architect shall include:
 - (1) One (1) pre-construction meeting
 - (2) One hundred (100) construction OAC meetings, 1-HR duration
 - (3) One hundred (100) construction observation visits, 1-HR duration, to be combined with construction OAC meetings
 - (4) Six (6) floating construction meetings to be allocated as required
 - (5) 1 (1) substantial completion site visit
 - (6) 1 (1) final completion site visit

Additional OAC meetings/visits or OAC meetings/visits exceeding 2-hours shall be additional services. Field reports will be provided for each construction observation visit.
 - E. Sub-consultants shall attend construction meetings and provide construction observation visits on an as-needed basis per the scope of each discipline.
 - F. Prepare record drawings based upon field observations and Design-Build Contractor's as-built drawings mark-up submittals.

Submittals for Design Reviews

1. MYA will make submittals of the design to CSI Aviation for review at the following project milestones:
 - A. Draft Program and Concept Plan
 - B. 100% Program and Concept Plan
 - C. 100% Schematic Design
 - D. 100% Design Development
 - E. Interim/50% Construction Documents
 - F. Final/100% Construction Documents
 - G. Record Documents

Exclusions

Work not specifically identified in this proposal in connection to additions and/or revisions to the Project Scope shall be considered a change in service and shall be compensated on a mutually agreeable negotiated basis. Design of additional scope items to meet overall available project construction budget shall be additional services. Efforts for design and other services for increases in complexity of scope or additional scope represented by increases to the Project Budget, shall be compensated as a percentage of increased construction cost using the same percentage calculated from the initial fee and construction cost listed in this initial proposal.

The following services are excluded from the AE's scope of services.

- Civil Engineering
- Landscape Design
- Any work or costs related to building permitting, traffic impact analyses and/or traffic engineering
- Environmental impact assessments, Hazardous Materials Assessments or Abatement Design Documents and Monitoring
- Efforts for LEED compliance or certification or specific Owner sustainability goals or requirements
- BIM services excluded in the proposal above.
- Meetings during Phase 1 or design phases of Phase 2 in excess of those described.
- Site visits for Observation or OAC Meetings during the Construction Phase in excess of those described.
- Arborist Services
- Acoustics Consulting
- Commissioning Services
- TAB & TAB Pre-Audit Services
- Management, supervision, procuring estimates, and budgeting for movers and management of occupant furnishings and belongings.
- Any work or costs related to the inventorying, evaluation, photographic documentation, measurement, disassembly, disposal, storage, or incorporation of existing furniture or other existing items of any type into the project.
- Coordination with Owner purchased FF&E items.
- Functional and code compliance improvements or corrections outside the indicated project scope.

- Construction materials and systems testing.
- Services related to exhibit design, graphic design, selection of artwork or artwork procurement services.
- Permit expediting for building permit.
- Work within the City of Killeen or TXDoT Right-of-Way (ROW) requiring a full site plan permit.
- Services related to the preparation of offsite utility easements, and design of offsite utility, drainage, and street extensions/improvements.
- Fees related to/for all permits, waivers, permissions, entitlements, platting, etc.
- Efforts related to SWPPP.
- Design of rainwater and/or condensate collection for irrigation or other uses.
- Procurement for FF&E.
- Furniture planning services including custom designed furnishings not available through furnishings manufacturers.
- Elements of the design will be delegated to the Contractor as allowed by the regulating authorities. These may include but are not limited to awnings, canopies, guardrails and handrails, prefabricated stair units, curtain wall systems and storefront systems, cold formed metal framing, light gauge metal trusses, post-tensioned concrete members or panels or pre-stressed concrete members or panels, and full irrigation design plans and specifications.
- Enhanced Presentations, including renderings in excess of those described previously in this proposal, animation walk-through videos, and physical building models.
- Coordination or mitigation of Critical Environmental Features (CEF) or CEF buffers.
- Coordination or mitigation of improvements within Critical Water Quality Zone (CWQZ) buffers or other waterway setbacks.
- Coordination or mitigation of endangered species.
- Vacations or coordination of easement, alley, ROW, or other vacations or real estate transactions.
- Efforts related to the design of temporary ponds.
- Preparation or coordination of an Integrated Pest Management Plan (IPM).
- All effort associated with coordination with Texas Department of Transportation (TxDOT).
- Legal services.
- Accounting services.
- Costs of the AE team to demobilize and remobilize if the project is suspended.
- Energy calculations or modeling services.
- Preparation of fire protection and fire alarm variances and attendance at variance hearings.
- Fire hazard analysis.
- Cost of fire protection waterflow testing services.
- Rezoning services.
- Drainage system design services to manage onsite groundwater.
- Detention basin design.
- Detailed flood studies.
- Coordination with regulatory agencies related to caves, and development of cave closure plans.

- Primary interface for design or planning with dry utility providers.
- Preparation of metes and bounds with accompanying sketches for easements for dry utilities and more than two (2) easements for other than dry utilities.
- Paging, radio, cable TV, PBX, distributed antenna systems, and satellite systems design.
- Threat vulnerability consultation and reporting.
- Water feature design services.
- FF&E services
- Graphics & Wayfinding services
- Conformed set of Construction Drawings
- As-Built Record Drawings

Schedule of Compensation

We propose to provide the services as described above for the fees calculated as described below.

Phase 1 - Predesign Architectural Services: \$9,800

- Programming: \$4,300
- Multiple Preliminary Designs: \$3,500
- Site Evaluation and Planning: \$2,000

Phase 2 - Design Phase Services: \$240,500

- Architectural: \$175,000
- Structural: \$22,500
- Mechanical, Electrical, Plumbing: \$43,000

Phase 3 - Procurement and Construction Phase Services: \$89,500

- Architectural: \$68,000
- Structural: \$7,500
- Mechanical, Electrical, Plumbing: \$14,000

Supplemental Services: \$24,500

- Architect's Coordination of Owner's Consultants/Providers: \$1,610
- Information Technology (IT): \$6,760
- Audio Visual (AV): \$6,185
- Electronic Security/Surveillance (ESS): \$4,745
- Acoustics: \$5,200

Payments to the Architect shall be made monthly in proportion to the services performed. Payment for Basic Services shall be made, so that the compensation for Basic Services shall be at the cumulative percentages of the Total Basic Service fee listed above at the completion and acceptance of the indicated phase of the work.

Architect's Additional Services: Hourly at the Architect's standard hourly rates current at the time of services are provided or a mutually acceptable stipulated sum plus 1.15 times the amounts invoiced the Architect for consulting services.

Standard Hourly Rates: As indicated in Architect’s 2025 Fee Schedule. Rates will remain in effect until December 31st of the Schedule year and any increases will be limited to 8% per annum in that and subsequent calendar years.

Reimbursable Expenses: Cost of expenses incurred plus 15%. Reimbursables including, but not limited to:

- Renderings/modeling/animations
- Fees for RAS preliminary review, project registration, formal plan review, and project inspection.
- Travel to view comparable projects outside of Travis Co, Texas, including costs for airfare, mileage, rental car, miscellaneous associated expenses.
- In-house reimbursable expenses in accordance with MYA 2025 Reimbursable Expense Rate Schedule.

Schedule for Completion of Services

We will perform the work by the # of days shown upon receipt of an executed Contract. All durations listed are exclusive of Owner reviews. The Owner’s written authorization to proceed is required at each phase.

Phase 1 - Programming	20-30 calendar days
Phase 2 - Design Phase	90-120 calendar days

Durations for Design Development, Construction Documents, Procurement, and Construction Administration phases shall be submitted in a forthcoming proposal.

Owner Responsibilities

The Owner shall provide the following.

- Geotechnical Report: At the AE’s request, the Owner will provide geotechnical reports for the scope of work area including soils reports and paving design and specifications.
- Owner’s Consultants: Owner will provide required third-party consultants including Commissioning, Testing and Balancing, Environmental, and Construction Materials testing.
- Owner’s Project Requirements (OPR): Owner will provide OPR to the AE to the extent available.

Please feel free to call if you have any questions.

Respectfully submitted,



Brian Carlson, AIA, LEED AP BD+C
Principal

Attachments:

Exhibit A - 2025 Fee Schedule
Exhibit B - 2025 Reimbursable Expenses Schedule
Exhibit C - Structures Proposal
Exhibit D - Cleary Zimmerman Proposal
Exhibit E - Datacom Proposal

The Texas Board of Architectural Examiners has jurisdiction over complaints
regarding the professional practice of persons registered as architects in Texas.
Texas Board of Architectural Examiners | PO Box 12337, Austin, TX 78711-2337
ph 512 305 9000 | www.tbae.state.tx.us

January 30, 2025

Morgan McLaughlin
Synergy Commercial Construction
1500 Rivery Boulevard, Suite 2280
Georgetown, TX 78628
mmclaughlin@synergycctx.com

Re: Professional Services Agreement – Rev. 2
Killeen Airport Office Building
Reese Creek Road
Killeen, TX 76540

Dear Mr. McLaughlin:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to Synergy Commercial Construction (“Client”) for providing professional civil engineering services.

Project Understanding

We understand that the Client is interested in the development of a ±5-acre commercial project located at the corner of Reese Road and Clear Creek Road in Killeen, Texas (the “City”). Kimley-Horn assumes the following in preparation of the Agreement:

Project Location



Assumptions

- The site is located in the full purpose zoning jurisdiction of the City;
- Kimley-Horn will assist in preliminary site planning coordination under **Task 1**. Any revisions to the final site plan after completion of **Task 1** will be considered an additional service;
- We will verify during preliminary engineering under **Task 1** if a Traffic Impact Analysis (TIA) is required for this property. We assume that a study will be required when considering that the project is anticipated to generate more than 2,000 trips per day or 100 trips during peak hour. If a TIA is required, it can be provided as an additional service;
- All internal roadways will be private;
- Water (+/-450 LF) and wastewater (+/-200 LF) extensions are needed to serve the development. If additional utility extensions are necessary, then an additional service for design and survey of the additional offsite improvements will be required;
- No storm water quality treatment facilities will be required for this site;
- On-site stormwater detention will be required. ;
- The site is not located in the Edwards Aquifer Recharge or Contributing Zone per the Texas Commission on Environmental Quality (TCEQ). No Water Pollution Abatement Plan (WPAP) or Contributing Zone Plan (CZP) approval will be required;
- City required code lighting plans, retaining or structural wall designs, if required, will be provided by others;
- The required TDLR/TAS submittals for site accessibility requirements will be made by the Client's Project Architect;
- No structural engineering has been included in this scope of services;
- The Project Architect will coordinate with a MEP engineer and/or a Fire Protection consultant to determine domestic and fire suppression system demands, the anticipated wastewater effluent rate, and to coordinate electrical and gas services to the proposed building;
- The Client has retained professional geotechnical services. The use of the reports, additional exploratory effort, and revisions will be the responsibility of the Client. Kimley-Horn may facilitate such efforts on behalf of the Client as requested;
- Our plans will establish proposed finished grade elevations outside the building. The Client understands that there is the potential for vertical movement of flatwork after construction is complete. The amount of vertical movement can be mitigated by preparing the subgrade beneath the flatwork like the subgrade under the building. We recommend that the Client obtain building and flatwork subgrade preparation recommendations from the geotechnical engineer. Our plans will direct the contractor to the Geotechnical Report for subgrade recommendations. The Client understands that even with proper subgrade preparation of the building and the flatwork there is still the potential for vertical movement and finely graded areas, ADA routes, etc. may need to be adjusted and maintained in the future if they move;
- A Traffic Control Plan (TCP) will be the responsibility of the contractor and deferred to the time of construction. If a concurrent TCP is requested by the Client, it can be included as an additional service;
- Kimley-Horn will have legal access to the property; and
- The Client will assume payment for all review fees.

Scope of Services

Due Diligence Services

Task 1 - Initial Due Diligence and Concept Plan Design

Kimley-Horn will assist the Client in reviewing and developing a site layout in partnership with the Project Architect. We will request and review documentation of existing water, wastewater, storm drainage, and roadway improvements on or immediately adjacent to the site and incorporate with survey information to develop a preliminary Constraints Exhibit. The exhibit will be shared with the Project Architect and utilized to develop Concept Plan(s) of the project site and ancillary improvements that are generally consistent with the requirements of the City's development guidelines. This task includes assisting the Project Architect and Client in the preparation of two layouts, one revision to each layout, and the associated correspondence. Kimley-Horn will request and attend a formal Pre-Development meeting with the City of Manor. This budget provided includes up to 20 hours.

Task 2 - On-Call Services

This task is intended to capture effort expended by Kimley-Horn on tasks that are requested by the Client but are not already included in the defined scope of services, including zoning assistance, miscellaneous meetings, exhibits, etc. requested by the Client. This task is also intended to capture effort necessary to complete a task beyond the effort included in the detailed scope description.

Surveying Services

Task 3 - Boundary Survey

If the Client directed Kimley-Horn to perform a boundary survey of a ± 3.5 Acre tract of land. Kimley-Horn will trace the boundary in the field in an effort to determine whether it is legally correct. If discrepancies or errors are found with the boundary then Kimley-Horn will inform the client but this task does not include effort to correct the work of others. No certified documents will be prepared for this task.

Task 4 - Topographic Survey

Kimley-Horn will prepare a topographic survey for the site to be used for site planning and civil engineering design purposes. The topographic survey is to be used in-house and will not be issued as a stand-alone survey document. The survey will consist of: elevations around the immediate perimeter of the site; contour lines representing the surface of the existing ground at one foot intervals based on a survey grid system and tied to existing control points; observed (only if clearly visible from the surface) locations of existing water, sewer, storm drain, and franchise utility facility appurtenances; Texas 811 markings of subsurface utilities that are in place at the time our field work is being done; and two benchmarks established with the survey.

Austin TBPELS Firm Number: 10194624

Task 5 - Tree Survey

If Kimley-Horn scope includes a Tree Inventory this survey will show the approximate locations and tag numbers corresponding to the on-site trees, marked and categorized by Kimley-Horn under the Tree Inventory task. If Kimley-Horn scope does not include a Tree Inventory then this survey will show

approximate locations of trees, their likely species, and estimate of their size. We will endeavor to locate all trees meeting the requirements of the local tree protection ordinance.

Austin TBPELS Firm Number: 10194624

Task 6 – Final Plat (Single Lot)

Kimley-Horn will prepare and submit a Final Plat, Checklist, and Application to the local jurisdiction for review. Kimley-Horn will attend one meeting with review staff and, if required, one public hearing at which the item is considered for approval. If approved, Kimley-Horn will coordinate filing of the Plat with the Bell (County). Kimley-Horn will provide the necessary field work to pin each corner for the new platted boundary.

AustinTBPELS Firm Number: 10194624

Task 7 – Final Plat Processing

This task is to capture effort expended by Kimley-Horn for project final plat submittals and responses to jurisdictional review comments beyond the effort otherwise included in our scope of services. Because the extent of the review comments required by the City for plan approval is unknown, we have provided a projected budget for these services, but actual cost will depend on actual effort required. This budget provided includes up to 20 hours.

Task 8 – Final Civil Engineering – Site Plan

Kimley-Horn will prepare on-site civil engineering plans for the proposed development. The plan set will consist of the following sheets:

- A. Cover Sheet: Showing sheet index, project location map, contact information, and plan submittal and review log.
- B. General Notes and Project Specifications: Showing general notes related to proposed construction based on jurisdictional standards.
- C. Dimension Control Plan: Showing the site layout (provided by Project Architect) and property boundary with dimensional ties for building envelopes, parking, and roadway(s).
- D. Erosion Control Plan: Showing initial erosion control measures to be installed prior to disturbance of the site. The erosion control measures will be maintained and modified throughout site construction by the Contractor, and it is the Contractor's responsibility to modify the plan during construction as necessary to comply with the conditions of their permits. This task does not yield a Storm Water Pollution Prevention Plan (SWPPP) document.
- E. Grading Plan: Showing proposed finished floor elevations and, as applicable, spot elevations and one-foot contours for public sidewalks, drives, and parking areas. Detailed grading of landscape areas will be coordinated with, but designed by, the Landscape Architect. Retaining walls needed to accomplish the grading will be shown with proposed top and toe elevations in a "wall zone". The selection of the wall system and the structural design of the walls is beyond the limited scope of this agreement and will be provided by Kimley-Horn or others under a separate agreement with the Client.
- F. Paving and Striping Plan: Showing proposed paving type for parking areas, fire lanes, and drives based upon recommendations in the geotechnical report provided by the Client. This plan will show handicap parking signage.

- G. Water and Wastewater Plan: Showing on-site water and wastewater plan layouts to within five feet of proposed building(s). Showing off-site water and wastewater extensions and connections to existing water and wastewater mains as described in the Assumptions section.
- H. Drainage Area Map: Showing existing and proposed on-site and applicable off-site drainage patterns and discharges to/from the site to be used as the basis for drainage system sizing and layout. Landscaped areas will be shown as individual drainage areas for sizing of a receiving pipe. Small drainage areas for each individual landscape drain will not be shown and will be designed by the Landscape Architect.
- I. Storm Drainage Plan: Showing proposed storm inlet and storm drain sizes and locations for site drainage in plan view. The plan will also show private storm drain to collect roof downspouts, for which the pipe size will be determined by the MEP engineer. If provided in a timely manner, Kimley-Horn will coordinate design and location of area drains with the Landscape Architect and design a pipe system to collect the area drains; if not provided in a timely manner, Kimley-Horn will stub out a pipe for the Landscape Architect to connect the drainage system they design.
- J. Construction Details: Typical construction details for proposed site civil engineering improvements will be included by reference to applicable jurisdictional standard details. If deemed necessary by Kimley-Horn, construction details for certain site civil engineering improvements will be included in the plan set.

Task 9 – Submittals and Permitting – City of Killeen

This task is to capture effort expended by Kimley-Horn for project submittals and responses to jurisdictional review comments beyond the effort otherwise included in our scope of services. It is assumed that the Project Architect will submit the combined Site Plan and Building Plan Permit Application to the City. Because the extent of the review comments required by the City for plan approval is unknown, we have provided a projected budget for these services, but actual cost will depend on actual effort required. This budget provided includes up to 60 hours.

Task 10 – Miscellaneous Submittals and Permits

This task is to capture effort expended by Kimley-Horn for project submittals and responses to additional jurisdictional review comments beyond the effort otherwise included in our scope of services (i.e. Airport Review, FAA Review, etc.). Because the extent of the review comments required by the additional jurisdictions for plan approval is unknown, we have not provided a projected budget for these services, but actual cost will depend on actual effort required. This budget provided includes up to 30 hours.

Task 11 – Meetings and Team Coordination

Kimley-Horn will prepare for and attend meetings with the design team, reviewing staff, neighbors and other stakeholders. Because the extent of the effort required is unknown, we have provided a projected budget for these services but actual cost will depend on actual effort required. This budget provided includes up to 40 hours.

Task 12 – Landscape Plans – Code Compliant Only

KH will prepare a code landscape plan in an effort to meet the minimum code landscape requirements set forth in the reviewing agency's current published regulations. The plan will consist of a landscape plan, supporting landscape code calculations, data tables, and details. Modifications to the plans resulting from significant site layout changes or additional review comments directed by the City, the Client, or their representatives shall be considered an additional service and will be billed on an hourly basis according to our current rate schedule. This task includes one site visit at the end of the project to prepare a concurrence letter per the reviewing agency's requirement.

Task 13 – Tree Preservation and Mitigation Plans

KH will prepare tree preservation and mitigation plans in an effort to meet the tree mitigation requirements set forth in the reviewing agency's current published regulations. The plan will consist of a tree preservation and mitigation plan, supporting tree preservation code calculations and tree inventory tables, variance requests, and associated details and specifications.

Task 14 – Irrigation Plans

Irrigation plans will be prepared upon Client approval of the landscape plans. Irrigation plans shall be submitted to the reviewing agency for initial city review and revised per 2 rounds of reasonable comments. The Irrigation plan will show head layout, pipe sizing, controller/valve locations, calculations, specifications, and standards details. The Client will specify the preferred irrigation equipment brand (Toro, Hunter, Weathermatic, or Rainbird) prior to initiation of the irrigation design. Effort for this task includes plan preparation, submittal to the City and work to address up to two (2) rounds of ordinary and reasonable simultaneous comments from the City and Client. Modifications to the plans resulting from significant site layout changes or additional review comments directed by the City, the Client, or their representatives shall be considered an additional service and will be billed on an hourly basis according to our current rate schedule.

Task 15 – Landscape Submittals and Permitting – City of Killeen

This task is to capture effort expended by KH for project submittals and responses to jurisdictional review comments beyond the effort otherwise included in our scope of services. Because the extent of the review comments required by the city for plan approval is unknown, we have provided a projected budget for these services, but actual cost will depend on actual effort required. Effort for this task includes plan preparation, submittal to the City and work to address up to two (2) rounds of ordinary and reasonable simultaneous comments from the City and Client. Modifications to the plans resulting from significant site layout changes or additional review comments directed by the City, the Client, or their representatives shall be considered an additional service and will be billed on an hourly basis according to our current rate schedule. This budget provided includes up to 25 hours.

Task 16 – Storm Water Pollution Prevention Plan (SWPPP)

Kimley-Horn will prepare a SWPPP for the site in general accordance with current published Texas Commission on Environmental Quality (TCEQ) standards. This task will incorporate the Erosion Control Plan for the site, prepared under a separate task, to be included with the SWPPP report. The Contractor is responsible for all permit application, inspections, record keeping, and adjustments to the SWPPP during construction in accordance with the terms of their permits.

Task 17 – Storm Water Detention Facility Plan and TxDOT Drainage Review

Kimley-Horn will perform design calculations to size one on-site stormwater detention facility. Facility sizing results, proposed finished grading elevations, and design water surface elevations will be shown on the plans. The facility outfall improvements will be shown on the Storm Drainage Plan. Direction to the Contractor regarding the lining material for a detention pond facility will be obtained by the Client as part of their geotechnical recommendations for the project and are not part of this limited scope.

The site appears to drain to an existing drainage culvert pipe located within the TxDOT owned ROW adjacent to the site. Since our developed site will revise the drainage patterns towards TxDOT ROW, a formal Drainage Review will be required by TxDOT to allow for a drainage outfall to be constructed within the TxDOT owned ROW. Kimley-Horn will prepare and submit this formal review and pursue approval.

Task 18 – Phase 1 Environmental Assessment (ESA)

Kimley-Horn will prepare one Phase I ESA report encompassing findings from the Subject Property and will be valid for a period of 180 days from the start of the investigation. The Phase I ESA will be performed in general accordance with the methods outlined in the United States Environmental Protection Agency (USEPA) Standards and Practices for All Appropriate Inquiries (AAI), 40 CFR Part 312 and guidelines established by the American Society for Testing and Materials (ASTM) in the Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process/Designation E 1527-21 (ASTM Standard Practice E 1527-21). The following tasks refer to only that information defined as reasonably ascertainable per ASTM E 1527-21, 3.2.72.

Kimley-Horn will conduct the efforts listed below:

- Records Review – review the following records and data:
- User Provided Information – all information requested from the Client as detailed below
- Record Search – environmental database search prepared in general accordance with the minimum search distances listed in ASTM E1527-21, 8.2.2 and state and local environmental agency files, where available, and if the Environmental Professional (EP) determines the files to be reasonably ascertainable and relevant to the Phase I ESA
 - IC/EC Registries – databases on institutional and engineering (IC/EC) controls and Activity Use Limitations (AULs).
 - Aerial Photograph Review – historical aerial photographs of the site and the surrounding vicinity to the earliest date that is reasonably obtainable.
 - Review of Local City Directories and Historical Maps – historical city directories, fire insurance maps, and historical topographic maps.
- Tier 1 Vapor Encroachment Screening (VES) – perform a Tier 1 VES in general accordance with the methods outlined in ASTM E2600-22 with the purpose of identifying if a Vapor Encroachment Condition (VEC) exists in association with the subject property.
- *Site Reconnaissance* of the Subject Property –to observe exterior site conditions, interior site conditions, evidence of current and past uses of the property, and evidence of current and past uses of the adjoining properties as viewed from the subject property and public thoroughfares.

All site reconnaissance will be non-invasive and limited to up to one person in the field for one day.

- Interviews With:
 - Current and past owners, operators and occupants of the subject property
 - Current neighboring or nearby property owners in the case of abandoned properties where there is evidence of uncontrolled access or unauthorized uses
 - One or more of the following state or local agencies: fire department, health agency, and/or environmental regulatory agency

User Provided Information:

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project. This information is necessary for the Client (or prospective purchaser) to meet the requirements of the Landowner Liability Protections (LLPs) (ASTM E 1527-21, 1.1 and 3.2.47) and for Kimley-Horn to conduct the Phase I ESA consistent with ASTM E 1527-21. The following information is required prior to the site reconnaissance:

- Confirmation of the Subject Property limits, address, tax parcel ID and acreage
- Site access to all portions of the Subject Property and structures
- Completed User Questionnaire
- Existing survey or site plan depicting the existing condition, if available

Task 19 – Franchise Utility Coordination

Kimley-Horn will provide assistance to the Client to arrange franchise utility service (gas, electric, cable/data, and telephone) for the project. Design of franchise utilities will be by the franchise utility companies. Kimley-Horn will coordinate locating these utilities on the site utility plan as they relate to the storm drain, water, and wastewater layouts. If provided in a timely manner and in AutoCAD format by the franchise utility companies, the franchise utility layouts will be shown on the civil plans.

Because the extent of the effort required is unknown, we have provided a projected budget for these services but actual cost will depend on actual effort required. This budget provided includes up to 20 hours.

Task 20 – Construction Phase Services

Kimley-Horn can provide professional construction phase services as specifically stated below as directed by the Client per the then current hourly rate schedule. Because the extent of the effort required is unknown, we have provided a projected budget for these services but actual cost will depend on actual effort required. This budget provided includes up to 48 hours.

1. Pre-Construction Conference: Kimley-Horn will attend the pre-construction conference prior to commencement of Work at the Site as requested by the Client.
2. Site Visits: Kimley-Horn will visit the site to observe construction of improvements designed by Kimley-Horn. Visits will be periodic, and observations will not be exhaustive or extend to every aspect of Contractor's work in progress. Kimley-Horn shall not, during such visits or as a result

- of such observations supervise, direct, control, influence, or have responsibility over Contractor's work. Kimley-Horn neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents or permits.
3. Clarifications and Interpretations: Kimley-Horn will respond to reasonable and appropriate Contractor requests for information and issue clarifications and interpretations of the Contract Documents to Client. Any authorization of variations from the Contract Documents will be made by Client.
 4. Review and Response to Shop Drawings: Kimley-Horn will review and respond to certain Shop Drawings, Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents.
 5. Record Drawings: The Contractor will provide redlined set of the site civil drawings to Kimley-Horn showing all changes made to the approved design during construction. Kimley-Horn will review the redlined drawings provided and will prepare Record Drawings. The Record Drawings will show only those changes exported by the Contractor to Kimley-Horn and considered to be significant and will contain a note to this effect. Record Drawings are not "As Built" drawings and no independent verification will be done by Kimley-Horn. Kimley-Horn will submit the Record Drawings to the local jurisdiction and provide the files to the Client in PDF format.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Construction Staking, As-built Survey, or Post Construction ALTA Survey;
- TXDOT Driveway
- Traffic control plans;
- Offsite improvements beyond what is included and described within the Assumptions section;
- Design of retaining walls or other structures;
- Environmental engineering or wetland delineation;
- Hydraulic modeling, FEMA CLOMR/LOMR, or flood study;
- Value Engineering (VE) or revisions to plans, based on previously approved criteria;
- License agreements; and
- Any item not specifically noted in this agreement.

Information Provided By Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Names of consultants on Project team;
- Geotechnical report, including foundation and paving design recommendations;
- MEP utility (water, wastewater, electric, gas) service locations, size, and depth;
- Code landscape architecture and irrigation plans required for site development permitting;

- Final Site Plan (ACAD 2012 Format); and
- Executed copy of this Agreement and access to property.

Fee and Expenses

The services in this agreement will be billed as follows:

Task 1	Initial Due Diligence and Concept Plan Design	\$	5,000	(HR NTE)
Task 2	On-Call Services	\$	5,000	(HR)
Task 3	Boundary Survey	\$	5,800	(LS + TAX)
Task 4	Topographic Survey	\$	4,700	(LS)
Task 5	Tree Survey	\$	1,500	(LS)
Task 6	Final Plat (Single Lot)	\$	12,000	(LS + TAX)
Task 7	Final Plat Processing	\$	5,000	(HR NTE)
Task 8	Final Civil Engineering - Site Plan	\$	48,500	(LS)
Task 9	Submittals and Permitting - City of Killeen	\$	15,000	(HR NTE)
Task 10	Miscellaneous Submittals and Permits	\$	8,000	(HR NTE)
Task 11	Meetings and Team Coordination	\$	10,000	(HR NTE)
Task 12	Landscape Plans - Code Compliant Only	\$	6,500	(LS)
Task 13	Tree Preservation and Mitigation Plans	\$	3,250	(LS)
Task 14	Irrigation Plans	\$	3,250	(LS)
Task 15	Landscape Submittals and Permitting - City of Killeen	\$	6,000	(HR NTE)
Task 16	Storm Water Pollution Prevention Plan (SWPPP)	\$	2,500	(LS)
Task 17	Storm Water Detention Facility Plan	\$	8,000	(LS)
Task 18	Phase 1 Environmental Assessment (ESA)	\$	6,000	(LS)
Task 19	Franchise Utility Coordination	\$	5,000	(HR NTE)
Task 20	Construction Phase Services	\$	12,000	(HR)
Total		\$	173,000	

For Lump Sum (LS) tasks, lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Reimbursable expenses will be invoiced based upon expenses incurred.

For Hourly (HR) and (HR NTE) tasks, labor fee will be billed on an hourly basis according to our then-current rates.

As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to **Synergy Commercial Construction**.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

_____ Please email all invoices to _____

_____ Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute a copy of this Agreement in the spaces provided below and return a copy to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Signed:



Printed Name: Joshua W. Miksch, PE
Title: Senior Project Manager



Jeremy Rogers
Project Manager

Synergy Commercial Construction

SIGNED: _____ Client Federal Tax ID: _____

PRINTED NAME: _____ Client Business License No.: _____

TITLE: _____ Client Street Address: _____

Attachment – Standard Provisions

KIMLEY-HORN AND ASSOCIATES, INC.

STANDARD PROVISIONS

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. The Client will remit all payments electronically to:
Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
Account Number: 2073089159554
ABA#: 121000248
 - c. The Client will send the project number, invoice number and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.
 - d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings.

Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.

- g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND KIMLEY-HORN, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF KIMLEY-HORN AND KIMLEY-HORN'S OFFICERS, DIRECTORS,

EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS, ATTORNEYS' FEES (INCLUDING ATTORNEYS' FEES OTHERWISE RECOVERABLE UNDER TEX. CIV. PRAC. & REM. CODE § 38.001), OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF KIMLEY-HORN OR KIMLEY-HORN'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY KIMLEY-HORN UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION SHALL REQUIRE THE CLIENT TO INDEMNIFY KIMLEY-HORN.

- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
 - a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the

Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.

- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.