

**AGENDA PLACEMENT FORM**

(Submission Deadline – Tuesday, 12:00 PM before Regular Court Meetings)

Date: Jan 17, 2023

Meeting Date: Jan 23, 2023

**Submitted By: Jim Simpson**

COMMISSIONERS COURT

**Department/Office: County Attorney's Office**

JAN 23 2023

**Signature of Director/Official: Jim Simpson, Asst. Co Atty.**

**Approved**

**Agenda Title: Unfinished Business. Contract between Johnson County and RJM Contractors, Inc.**

**Public Description** (Description should be 2-4 sentences explaining to the Court and the public what action is recommended and why it is necessary):

**Consideration for Approval and Authorization to Sign Contract between Johnson County and RJM Contractors, Inc., with associated Exhibits and Addendum for Construction of 911 Call Center Building, Including Guaranteed Maximum Price Exhibit.**

**(Further or separate description – if that is what you intended is set out below)**

**This is a contract with exhibits setting out the cost and description of a project to construct a new 911 Call center building for Johnson County. The Guaranteed Maximum Price for the construction is set at \$4,492, 476.30 subject to modifications or change orders later approved by the Commissioners Court.**

**Person to Present: Ralph McBroom, Josh Green, Bill Moore and / or Jim Simpson**

(Presenter must be present for the item unless the item is on the Consent Agenda)

**Supporting Documentation:** (check one) PUBLIC  CONFIDENTIAL \_\_\_\_\_

AIA A104-2017 Standard Abbreviated Form of Agreement Between Owner and Contractor

AIA Document A 104 -2017 Exhibit a Determination of Cost of the Work

Exhibit A Attachment A Construction Management Pricing Form

Exhibit B Project Manual (Specifications)

Exhibit C Plans

Exhibit D Insurance Information

Exhibit E Guaranteed Maximum Price

(PUBLIC documentation may be made available to the public prior to the Meeting)

**Estimated Length of Presentation: 15 minutes**

**Session Requested: ACTION ITEM** (Action Item, Workshop, Consent, Executive)

**Check All Departments Requiring Notification:**

County Attorney  IT    Purchasing  Auditor

Personnel            Public Works            Facilities Management     \_\_\_\_\_

Other Department/Official (list) \_\_\_\_\_



RJM Contractors, Inc.  
7616 Benbrook Parkway  
Benbrook, TX 76126

www.rj-miller.com

# TRANSMITTAL

TO:

Johnson County  
2 N. Main Street  
Cleburne, TX 76033

DATE:

1/19/23

ATTN:

Paula Reid 817-556-6360

DESCRIPTION:

Johnson County 911 Call Center - Contract Documents  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COPIES	DATED	DESCRIPTION
1	1/23/23	A104 -2017 Contract
1	123/23	A104 – 2017 Exhibit A
1	1/18/23	Contract Terms Addendum 1 - Johnson County 911 Call Center
1	1/23/23	Exhibit A – Attachment A
1	8/30/22	Exhibit B - Specifications
1	8/30/22	Exhibit C - Plans
1	7/27/22	Exhibit D – Insurance Certificate
1	1/12/23	Exhibit E – GMP Pricing

THE ATTACHED IS SUBMITTED FOR:

- For approval     
  Furnish as submitted     
  Resubmit for approval  
 For your use     
  Furnish as noted     
  Submit for distribution  
 As requested     
  Returned for corrections     
  Return corrected prints  
 For review & comment

RETURNED LOANED PRINTS

FOR BIDS DUE

Please return executed pdf copy by email or  
hard copy by mail.

REMARKS:

SINCERELY,

**Trevor Browne**

RJM Contractors

**NOTICE TO PROCEED WITH CONSTRUCTION SERVICES  
RELATED TO THE CONSTRUCTION OF THE  
JOHNSON COUNTY 911 CALL CENTER**

This NOTICE TO PROCEED is issued by Johnson County, Texas to RJM Contractors, Inc., pursuant to the terms of the AIA A104-2017 Agreement Between Owner and Contractor for Construction and incorporated documents executed by RJM Contractors, Inc. and by Johnson County, and specifically including Exhibit E Guaranteed Maximum Price approved January 23, 2023 by the Johnson County Commissioner's Court.

**The Commissioners Court of Johnson County, Texas hereby authorize Johnson County Purchasing Agent Ralph McBroom to provide to RJM Contractors, Inc. this Notice to Proceed with the performance of construction services as set forth in the above described documents and Agreement.**

Ralph McBroom 1-23-23  
Johnson County Purchasing Agent Date  
Ralph McBroom

April Long 1-23-23  
Attest: County Clerk Date





# AIA Document A104™ – 2017

## Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the 23rd day of January in the year 2023  
(In words, indicate day, month and year.)

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

Johnson County, Texas  
2 North Main Street  
Cleburne, TX 76033  
Telephone Number: 817-556-6350

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

RJM Contractors, Inc.  
7616 Benbrook Parkway  
Benbrook, TX 76126  
Telephone Number: 817-377-0971  
Fax Number: 817-377-0973

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

Johnson County 911 Call Center  
802 E. Kilpatrick  
Cleburne, TX 76033  
Ground Up Construction of a new single story 8,200 sqft - heated area including a tornado shelter within the building footprint.

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

Robert Durham Architecture  
8545 Crichton Court  
Cleburne, TX 76033  
Telephone Number: 214-673-4460

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

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

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

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TABLE OF ARTICLES

- 1 THE WORK OF THIS CONTRACT
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENT
- 5 DISPUTE RESOLUTION
- 6 ENUMERATION OF CONTRACT DOCUMENTS
- 7 GENERAL PROVISIONS
- 8 OWNER
- 9 CONTRACTOR
- 10 ARCHITECT
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- 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 13 CHANGES IN THE WORK
- 14 TIME
- 15 PAYMENTS AND COMPLETION
- 16 PROTECTION OF PERSONS AND PROPERTY
- 17 INSURANCE AND BONDS
- 18 CORRECTION OF WORK
- 19 MISCELLANEOUS PROVISIONS
- 20 TERMINATION OF THE CONTRACT
- 21 CLAIMS AND DISPUTES

EXHIBIT A DETERMINATION OF THE COST OF THE WORK

ARTICLE 1 THE WORK OF THIS CONTRACT

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

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

The date of this Agreement.

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CE<sup>1</sup>  
JB

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

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

Upon receipt of a Signed Contract, . Approved GMP, & Notice to Proceed

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

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

### § 2.3 Substantial Completion

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

*(Check the appropriate box and complete the necessary information.)*

Not later than Three Hundred Ninety Five ( 395 ) calendar days from the date of commencement of the Work. See Exhibit A – Attachment A for calendar day descriptions

By the following date:

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

Portion of Work	Substantial Completion Date
N/A	

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

### ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

*(Check the appropriate box.)*

Stipulated Sum, in accordance with Section 3.2 below

Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

*(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)*

§ 3.2 The Stipulated Sum shall be N/A ( \$ ), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

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§ 3.2.2 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

§ 3.2.3 Allowances, if any, included in the stipulated sum:

(Identify each allowance.)

Item	Price
N/A	

§ 3.3 Cost of the Work Plus Contractor's Fee

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

See attached Exhibit A-Attachment A for explanation (\$15,000.00 pre-construction fee, \$393,508.00 general conditions cost, and 5% fee on balance/cost of construction

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is **guaranteed by the Contractor not to exceed (\$ 4,492,476.30 )**, subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price.. **Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.**

(Insert specific provisions if the Contractor is to participate in any savings.)

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

See EXHIBIT E GUARANTEED MAXIMUM PRICE – 4,492,476.30

§ 3.4.3.3 Unit Prices, if any:

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

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Item	Units and Limitations	Price per Unit (\$0.00)
See attached Exhibit A-Attachment A		

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:  
(Identify each allowance.)

Item	Price
As set out in EXHIBIT E GUARANTEED MAXIMUM PRICE ATTACHED HERETO. Any allowances will include labor and material unless specifically stated otherwise.	

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

As set out in EXHIBIT E GUARANTEED MAXIMUM PRICE ATTACHED HERETO AND INCORPORATED  
HEREIN FOR ALL PURPOSES.

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

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Liquidated damages, if any:  
(Insert terms and conditions for liquidated damages, if any.)

N/A

#### ARTICLE 4 PAYMENT

##### § 4.1 Progress Payments

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

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

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the 30<sup>th</sup> day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 15<sup>th</sup> day of the 15<sup>th</sup> day of the SECOND MONTH following the month in which the Architect received the Application for Payment . If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than Forty-five ( 45 ) days after the Architect receives the Application for Payment.  
(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:  
(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

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

Maximum allowed by law %

#### § 4.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

30 days following receipt of final pay application and Certificate of Occupancy.

#### ARTICLE 5 DISPUTE RESOLUTION

##### § 5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

- Arbitration pursuant to Section 21.6 of this Agreement
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

#### ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203–2013 incorporated into this Agreement.)*

N/A

§ 6.1.3 The Supplementary and other Conditions of the Contract:

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Document	Title	Date	Pages
N/A			

§ 6.1.4 The Specifications:  
*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

See attached Exhibit B for what is to be used to establish the GMP

Section	Title	Date	Pages
---------	-------	------	-------

§ 6.1.5 The Drawings:  
*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

See attached Exhibit C for what is to be used to establish the GMP

Number	Title	Date
--------	-------	------

§ 6.1.6 The Addenda, if any:

Number	Date	Pages
N/A		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:  
*(Check all boxes that apply.)*

- Exhibit A, Determination of the Cost of the Work.
- AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

CONTRACT ADDENDUM  
 TERMS FOR JOHNSON  
 COUNTY 911 CALL CENTER  
 2023

.2 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents.)*

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## EXHIBIT E GUARANTEED MAXIMUM PRICE

### ARTICLE 7 GENERAL PROVISIONS

#### § 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

#### § 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

#### § 7.3 The Work

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

#### § 7.4 Instruments of Service

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

#### § 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

#### § 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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### § 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### § 7.8 Severability

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

### § 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

#### For RJM Contractors:

Trevor Browne (or his successor)  
RJM Contractors, Inc  
7616 Benbrook Parkway  
Benbrook, TX 76126

#### For Johnson County:

Judge Christopher Boedecker (or his successor in office)  
Johnson County Judge's Office  
2 North Main Street  
Cleburne, Texas 76033

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

### § 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

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## ARTICLE 8 OWNER

### § 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

### § 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### § 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

## ARTICLE 9 CONTRACTOR

### § 9.1 Review of Contract Documents and Field Conditions by Contractor

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

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

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## § 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

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

## § 9.3 Labor and Materials

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

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

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

## § 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

## § 9.5 Taxes

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

## § 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

## § 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

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### § 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

### § 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

### § 9.10 Use of Site

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

### § 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

### § 9.12 Cleaning Up

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

### § 9.13 Access to Work

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

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**§ 9.14 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

**§ 9.15 Indemnification**

**§ 9.15.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

**§ 9.15.2** In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**ARTICLE 10 ARCHITECT**

**§ 10.1** The term "Architect" may be interchanged with "Owner" as needed throughout the contract as determined by individual instances as agreed to by owner's direction and/or response.

The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

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

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

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

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

§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

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

#### ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

#### ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

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## ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

## ARTICLE 14 TIME

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

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

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

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

## ARTICLE 15 PAYMENTS AND COMPLETION

### § 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

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§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

### § 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

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

### § 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

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§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

#### § 15.4 Certificates for Payment

§ 15.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

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

§ 15.4.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

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

§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

#### § 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to

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the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

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

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 15.6 Substantial Completion

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

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

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

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

### § 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

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- § 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from
- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
  - .2 failure of the Work to comply with the requirements of the Contract Documents;
  - .3 terms of special warranties required by the Contract Documents; or
  - .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

## ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

### § 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

### § 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

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## ARTICLE 17 INSURANCE AND BONDS

### § 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Per RJM's current policy. Sample Attachment "D" (\$ ) each occurrence, (\$ ) general aggregate, and (\$ ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than Per RJM's current policy. Sample Attachment "D" (\$ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation at statutory limits.

§ 17.1.6 Employers' Liability with policy limits not less than Per RJM's current policy. Sample Attachment "D" (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than N/A (\$ ) per claim and (\$ ) in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than N/A (\$ ) per claim and (\$ ) in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than N/A (\$ ) per claim and (\$ ) in the aggregate.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

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§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 17.1.14 Other Insurance Provided by the Contractor**

*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

Coverage	Limits
N/A	

**§ 17.2 Owner's Insurance**

**§ 17.2.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

**§ 17.2.2 Property Insurance**

§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

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§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

**§ 17.2.2.7 Waiver of Subrogation**

§ 17.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 17.2.3 Other Insurance Provided by the Owner**

*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage	Limits
----------	--------

**§ 17.3 Performance Bond and Payment Bond**

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

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

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**ARTICLE 18 CORRECTION OF WORK**

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect’s services and expenses made necessary thereby, shall be at the Contractor’s expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor’s obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

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

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

**ARTICLE 19 MISCELLANEOUS PROVISIONS**

**§ 19.1 Assignment of Contract**

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

**§ 19.2 Governing Law**

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction’s choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

**§ 19.3 Tests and Inspections**

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

§ 19.4 The Owner’s representative:  
*(Name, address, email address and other information)*

Joshua Green  
1 N. Main Str. Ste. 316  
Cleburne, TX 76033

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Telephone Number: 817-556-6071

Email Address: facilities@johnsoncountytexas.org

§ 19.5 The Contractor's representative:  
(Name, address, email address and other information)

Trevor Browne  
7616 Benbrook Parkway  
Benbrook, TX 76126  
Telephone Number: 817-377-0971  
Fax Number: 817-377-0973  
Mobile Number: 817-793-3458  
Email Address: tbrowne@rj-miller.com

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

## ARTICLE 20 TERMINATION OF THE CONTRACT

### § 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of 45 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 65 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

### § 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

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

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

### § 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

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

Fee shall be based on the **percentage of work completed** applied to the expected fee of \$393,508.00 general conditions cost, and 5% fee on balance/cost of construction & \$15,000.00 pre-construction fee.

## ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

### § 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

### § 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 21.10 Continuing Contract Performance**

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 21.11 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

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



**OWNER** (Signature)

Christohper Boedecker, Johnson County Judge  
(Printed name and title)



**CONTRACTOR** (Signature)

Trevor Browne, President of RJM Contractors; Inc.  
(Printed name and title)

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# Additions and Deletions Report for AIA<sup>®</sup> Document A104<sup>™</sup> – 2017

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:22:49 ET on 01/18/2023.

PAGE 1

AGREEMENT made as of the 23rd day of January in the year 2023

...

Johnson County, Texas  
2 North Main Street  
Cleburne, TX 76033  
Telephone Number: 817-556-6350

...

RJM Contractors, Inc.  
7616 Benbrook Parkway  
Benbrook, TX 76126  
Telephone Number: 817-377-0971  
Fax Number: 817-377-0973

...

Johnson County 911 Call Center  
802 E. Kilpatrick  
Cleburne, TX 76033  
Ground Up Construction of a new single story 8,200 sqft - heated area including a tornado shelter within the building footprint.

...

Robert Durham Architecture  
8545 Crichton Court  
Cleburne, TX 76033  
Telephone Number: 214-673-4460

PAGE 3

[  ] Established as follows:

...

Upon receipt of a Signed Contract. . Approved GMP. & Notice to Proceed

...

[  ] Not later than Three Hundred Ninety Five ( 395 ) calendar days from the date of commencement of the Work. See Exhibit A – Attachment A for calendar day descriptions

...

N/A

...

[  ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

...

§ 3.2 The Stipulated Sum shall be N/A (\$ ), subject to additions and deductions as provided in the Contract Documents.

PAGE 4

N/A

...

N/A

...

See attached Exhibit A-Attachment A for explanation (\$15,000.00 pre-construction fee, \$393,508.00 general conditions cost, and 5% fee on balance/cost of construction

...

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is **guaranteed by the Contractor not to exceed (\$ 4,492,476.30 )**, subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the ~~Guaranteed Maximum Price. Costs Price. Costs~~ **which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.**

...

See EXHIBIT E GUARANTEED MAXIMUM PRICE – 4,492,476.30

PAGE 5

See attached Exhibit A-Attachment A

...

As set out in EXHIBIT E  
GUARANTEED MAXIMUM PRICE  
ATTACHED HERETO. Any allowances  
will include labor and material unless  
specifically stated otherwise.

...

As set out in EXHIBIT E GUARANTEED MAXIMUM PRICE ATTACHED HERETO AND INCORPORATED  
HEREIN FOR ALL PURPOSES.



...

N/A

...

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the 30<sup>th</sup> day of a month, the Owner shall make payment of the certified amount to the Contractor not later than ~~the day of the month, the 15<sup>th</sup> day of the 15<sup>th</sup> day of the SECOND MONTH following the month in which the Architect received the Application for Payment.~~ If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than (~~Forty-five~~ ( 45 ) days after the Architect receives the Application for Payment.

PAGE 6

5%

...

Maximum allowed by law %

...

30 days following receipt of final pay application and Certificate of Occupancy.

...

[  ] Litigation in a court of competent jurisdiction

...

N/A

PAGE 7

N/A

...

See attached Exhibit B for what is to be used to establish the GMP

...

See attached Exhibit C for what is to be used to establish the GMP

...

N/A

...

[  ] Exhibit A, Determination of the Cost of the Work.

...

CONTRACT ADDENDUM

TERMS FOR JOHNSON  
COUNTY 911 CALL CENTER  
2023

PAGE 8

EXHIBIT E GUARANTEED MAXIMUM PRICE

PAGE 9

**For RJM Contractors:**

Trevor Browne (or his successor)  
RJM Contractors, Inc  
7616 Benbrook Parkway  
Benbrook, TX 76126

**For Johnson County:**

Judge Christopher Boedecker (or his successor in office)  
Johnson County Judge's Office  
2 North Main Street  
Cleburne, Texas 76033

PAGE 13

§ 10.1 The term "Architect" may be interchanged with "Owner" as needed throughout the contract as determined by individual instances as agreed to by owner's direction and/or response.

The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

PAGE 20

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Per RJM's current policy, Sample Attachment "D" (\$ ) each occurrence, (\$ ) general aggregate, and (\$ ) aggregate for products-completed operations hazard, providing coverage for claims including

...

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than Per RJM's current policy, Sample Attachment "D" (\$ ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

...

§ 17.1.6 Employers' Liability with policy limits not less than Per RJM's current policy, Sample Attachment "D" (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.

§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than N/A (\$ ) per claim and (\$ ) in the aggregate.

§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than N/A (\$ ) per claim and (\$ ) in the aggregate.

§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than N/A (\$ ) per claim and ( \$ ) in the aggregate.

PAGE 21

N/A

PAGE 23

Joshua Green

1 N. Main Str. Ste. 316

Cleburne, TX 76033

Telephone Number: 817-556-6071

PAGE 24

Email Address: facilities@johnsoncountytexas.org

...

Trevor Browne

7616 Benbrook Parkway

Benbrook, TX 76126

Telephone Number: 817-377-0971

Fax Number: 817-377-0973

Mobile Number: 817-793-3458

Email Address: tbrowne@rj-miller.com

...

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of ~~30-45~~ days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of ~~30-65~~ days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

PAGE 25

Fee shall be based on the **percentage of work completed** applied to the expected fee of \$393,508.00 general conditions cost, and 5% fee on balance/cost of construction & \$15,000.00 pre-construction fee.

PAGE 26

Christopher Boedeker, Johnson County Judge

Trevor Browne, President of RJM Contractors, Inc.

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:22:49 ET on 01/18/2023 under Order No. 2114336172 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
President

(Title)

\_\_\_\_\_  
1/18/23

(Dated)



# AIA Document A104™ – 2017 Exhibit A

## Determination of the Cost of the Work

### for the following PROJECT:

*(Name, location and brief description)*

Johnson County 911 Call Center  
802 E. Kilpatrick  
Cleburne, TX 76033  
Ground Up Construction of a new single story 8,200 sqft - heated area including a tornado shelter within the building footprint.

### THE OWNER:

*(Name, legal status, address and other information)*

Johnson County, Texas  
2 North Main Street  
Cleburne, TX 76033  
Telephone Number: 817-556-6350

### THE CONTRACTOR:

*(Name, legal status, address and other information)*

RJM Contractors, Inc., Subchapter S Corporation  
7616 Benbrook Parkway  
Benbrook, TX 76126  
Telephone Number: 817-377-0971  
Fax Number: 817-377-0973

### THE ARCHITECT:

*(Name, legal status, address and other information)*

Robert Durham Architecture  
8545 Crichton Court  
Cleburne, TX 76033  
Telephone Number: 214-673-4460

### ADDITIONS AND DELETIONS:

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

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

## ARTICLE A.1 COSTS TO BE REIMBURSED

### § A.1.1 Cost of the Work

§ A.1.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article A.1.

§ A.1.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost. The cost to be reimbursed will include pre-construction and general conditions as provided in the RFP2022-230 attached as "Exhibit A Attachment A"

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**§ A.1.2 Labor Costs**

**§ A.1.2.1** Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ A.1.2.2** Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

**§ A.1.2.2.1** Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

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

Project Manager – Trevor Browne

**§ A.1.2.3** Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ A.1.2.4** Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits, and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.1.2.

**§ A.1.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification. All labor rates will include a 41% labor burden.

**§ A.1.3 Subcontract Costs**

Payments made by the Contractor to Subcontractors in accordance with the requirements of their subcontracts and this Agreement.

**§ A.1.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ A.1.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ A.1.4.2** Costs of materials described in the preceding Section A.1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ A.1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ A.1.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

**§ A.1.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section A.1.8.1, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

**§ A.1.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

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§ A.1.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

**§ A.1.6 Miscellaneous Costs**

§ A.1.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ A.1.6.1.1 Costs of self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ A.1.6.1.2 Costs of insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

§ A.1.6.2 Sales, use, or similar taxes, imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ A.1.6.3 Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Contract Documents to pay.

§ A.1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Article 18 of the Agreement or by other provisions of the Contract Documents, and which do not fall within the scope of Section A.1.7.3.

§ A.1.6.5 Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.

§ A.1.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor has reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Section 9.14 of this Agreement. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

§ A.1.6.6 Costs for communications services, electronic equipment, and software directly related to the Work and located at the site, with the Owner's prior approval.

§ A.1.6.7 Costs of document reproductions and delivery charges.

§ A.1.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ A.1.6.9 Legal, mediation, and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ A.1.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ A.1.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ A.1.7 Other Costs and Emergencies**

§ A.1.7.1 Other costs incurred in the performance of the Work with the Owner's prior approval.

§ A.1.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

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§ A.1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

#### § A.1.8 Related Party Transactions

§ A.1.8.1 For purposes of this Section A.1.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds any equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ A.1.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article A.4. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article A.4.

### ARTICLE A.2 COSTS NOT TO BE REIMBURSED

§ A.2.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section A.1.2.2;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided written approval before such costs are incurred;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article A.1;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section A.1.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contractor by, the Contractor, Subcontractors and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article A.1; and
- .8 Where a Guaranteed Maximum Price is part of this Agreement, costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

### ARTICLE A.3 DISCOUNTS, REBATES AND REFUNDS

§ A.3.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ A.3.2 Amounts that accrue to the Owner in accordance with Section A.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### ARTICLE A.4 SUBCONTRACTS AND OTHER AGREEMENTS

§ A.4.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall

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obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers and, in consultation with the Architect, object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ A.4.2 When the Contractor has provided a Guaranteed Maximum Price, and a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.4.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost-plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article A.5.

#### ARTICLE A.5 ACCOUNTING RECORDS

§ A.5.1 The Contractor shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records, for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.2 When the Contractor believes that all the Work required by the Agreement has been fully performed, the Contractor shall deliver to the Owner's auditors a final accounting of the Cost of the Work.

§ A.5.3 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 4.2.1 of the Agreement have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 15.4.3 of the Agreement. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ A.5.4 If the Owner's auditors' report concludes that the Cost of the Work as substantiated by the Contractor's final accounting is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the dispute without a further decision of the Architect. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. If the Contractor fails to request mediation within this 30-day period, the substantiated amount reported by the Owner's auditors shall become binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount, if any, determined by the Owner's auditors to be due the Contractor.

§ A.5.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article A.1, Costs to be Reimbursed, and not excluded by Article A.2, Costs Not to be Reimbursed, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings, the amount of such savings shall be

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recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

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# Additions and Deletions Report for AIA<sup>®</sup> Document A104<sup>™</sup> – 2017 Exhibit A

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:43:27 ET on 01/18/2023.

## PAGE 1

Johnson County 911 Call Center

802 E. Kilpatrick

Cleburne, TX 76033

Ground Up Construction of a new single story 8,200 sqft - heated area including a tornado shelter within the building footprint.

...

Johnson County, Texas

2 North Main Street

Cleburne, TX 76033

Telephone Number: 817-556-6350

...

RJM Contractors, Inc., Subchapter S Corporation

7616 Benbrook Parkway

Benbrook, TX 76126

Telephone Number: 817-377-0971

Fax Number: 817-377-0973

...

Robert Durham Architecture

8545 Crichton Court

Cleburne, TX 76033

Telephone Number: 214-673-4460

...

§ A.1.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost. The cost to be reimbursed will include pre-construction and general conditions as provided in the RFP2022-230 attached as "Exhibit A Attachment A"

## PAGE 2

Project Manager – Trevor Browne

...

§ A.1.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification. All labor rates will include a 41% labor burden.

**CONTRACT TERMS ADDENDUM 1  
FOR  
JOHNSON COUNTY 911 CALL CENTER  
2023**

---

**1.1**

The following contract terms will be required in any contract entered into between Johnson County Texas and RJM Contractors, Inc. the Construction Manager at Risk and also, between Johnson County and any contractor or subcontractor engaged to perform work on the Johnson County 911 Call Center Project. This Project is located at 802 East Kilpatrick Street, Cleburne, Texas 76033.

**1.2**

The terms shall be a part of any Agreement between Johnson County, Texas, a political subdivision of the State of Texas, (hereinafter referred to as “County”), and RJM Contractors, Inc. (hereinafter referred to as “RJM” or “Construction Manager” or “Construction Manager at Risk” or “CM” or “CMAR” or “Contractor” and any construction manager, contractor or subcontractor who may be collectively referred to as the “PARTIES”).

**1.3**

The following documents shall comprise and constitute the entire and complete Agreement between the Parties:

- (a) AIA Document A 104-2017 Standard Abbreviated Form of Agreement Between Owner and Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.
- (b) Exhibit A, Construction Management Pricing Form
- (c) Exhibit B, Project Manual (Specifications)
- (d) Exhibit C, Plans
- (e) Exhibit D, Insurance Information
- (f) Exhibit E, Guaranteed Maximum Price
- (g) This Contract Terms Addendum 1 For Johnson County 911 Call Center.

**2.1**

This Agreement will be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

**2.2**

Limitations for the right to bring an action, regardless of form, shall be governed by the laws

of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

### 2.3

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

### 3.1

The Parties agree that under the Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

### 3.2

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

**... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) ...**

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

### 4.1

The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

### 4.2

The Parties agree and understand that County will not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

### 4.3

The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by

any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

**4.4**

The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

**4.5**

**Johnson County will provide or will arrange for the provision of Builders Risk Insurance as set forth in AIA Document A 104 - 2017, Insurance and Bonds.**

**5.1**

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31<sup>st</sup> day after the later of:

- a. the date the governmental entity receives the goods under the contract;
- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

**6.1**

No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

**6.2**

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information County reasonably believes that

any CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR might lawfully seek to claim as confidential, then County will forward the request to such CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR. It shall be the obligation of such CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with such CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR in making such submission to the Texas Attorney General's Office. **CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR acknowledges and understands that contracts, agreements, payment and revenue of a political subdivision of the State of Texas are public information and are not confidential.**

### 6.3

Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

### 6.4

Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

### 6.5

**IT IS UNDERSTOOD AND AGREED THAT JOHNSON COUNTY WILL NOT BE SUBJECT TO ARBITRATION; THEREFORE, ANY PARAGRAPH OR PROVISION REQUIRING ARBITRATION IS HEREBY DELETED.**

### 6.6

Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

### 7.1

If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary.

### 7.2

CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. RJM states that it is not ineligible to receive State or Federal funds due to child support arrearages

7.3

**CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term “boycott Israel” is as defined by Texas Government Code Section 808.001, effective September 1, 2017. CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term “foreign terrorist organization” means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.**

7.4

CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and, will not discriminate during the term of the contract against a firearm entity or firearm trade association.

7.5

CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it:

- (1) does not boycott energy companies; and
- (2) will not boycott energy companies during the term of the contract.

In this provision:

- (1) “Boycott energy company” has the meaning assigned by Section 809.001.
- (2) “Company” has the meaning assigned by Section 809.001, except that the term does not include a sole proprietorship.
- (3) “Governmental entity” has the meaning assigned by Section 2251.001.

7.6



Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of Johnson County, Texas.

**8.1**

CMAR must utilize the following Affidavit in Support of Application for Payment as part of all Applications for payment submitted to Johnson County.

**Affidavit in Support of Application for Payment**

State of Texas

County of \_\_\_\_\_

"My name is \_\_\_\_\_ (name of person signing document)  
I am of sound mind and capable of making an affidavit. I am authorized to execute this document, which I recognize as a government record. The matters I assert as facts in this document are within my personal knowledge and are true and correct.

"I further understand that statements I make in this document are being made in support of an Application for Payment being submitted to Johnson County, Texas and that this Affidavit and such Application for Payment are Governmental Records as that term is used in Texas Penal Code Section 37.10. I further recognize that to make, present, or use any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record is an offense. I further recognize that to make, present or use a governmental record with knowledge of its falsity is an offense.

"The Date of the Application for payment is \_\_\_\_\_ .

"The Current Payment Due Pursuant to the Application for Payment to which this Affidavit is Attached is \_\_\_\_\_.

\*\*\* [Select by marking with an "X" the proper paragraph A, B, or C set forth below.] \*\*\* PAYMENT TO CONTRACTOR MAY BE DELAYED OR DECLINED WITHOUT FAULT TO OWNER UNLESS A PARAGRAPH IS SELECTED AND THIS AFFIDAVIT IS PROPERLY EXECUTED.

A. \_\_\_\_\_ "The subcontractors, merchants, materialmen, suppliers of goods or services or such other persons or entities have been paid in full for such work or for such goods or services for which I am seeking payment by the attached Application for Payment,

OR,

B. \_\_\_\_\_ the funds being requested with the attached Application for Payment will be utilized to pay in full, as approved, the subcontractors, merchants, materialmen, suppliers of goods or services or such other persons or entities whose work or provision of supplies is the basis for the Application for Payment,

OR

C. \_\_\_\_\_ a separate sworn statement is provided HEREWITH to Owner and Architect setting forth with specificity the reason or dispute that is preventing or precluding contactor from paying a subcontractor or supplier for past work or delivery of materials."

\_\_\_\_\_ (Name of Individual or Corporate Officer) personally appeared before me, and being first duly sworn declared that he or she signed this document in the capacity designated, if any, and further states that he or she has read the above document and the statements therein are true.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Corporation and Capacity as Corporate Officer if Applicable

SWORN TO and SUBSCRIBED before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 by

\_\_\_\_\_ (name of person signing document).

\_\_\_\_\_  
Notary Public, State of Texas

**8.2**

COUNTY shall be entitled to copies of all construction documents and drawings utilized in the construction of the Project for COUNTY'S use in operating, maintaining and securing the building. Such documents and drawings shall not be used by COUNTY for any other building.

**8.3**

The Parties recognize that Johnson County is a political subdivision of the State of Texas and conducts business and approves and makes payments pursuant to Texas Constitutional and statutory requirements. The time period for any act to be done by the Owner shall be deemed extended by a period of 21 days to facilitate submission of the matter to the Commissioners Court and action to be taken thereon.

**8.4**

Any MODIFICATION or CHANGE ORDER requires the approval of the Commissioners Court of Johnson County prior to expenditure of funds or implementation of the MODIFICATION or CHANGE ORDER. This provision is intended to clarify Section 7.1 of the A 104 -2017 Document.

9.1

**In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. *THE TERMS OF THIS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENTS PUT FORTH BY RJM CONTRACTORS, INC. IS HEREBY DELETED.***


APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:

  
\_\_\_\_\_  
Christopher Boedeker  
As Johnson County Judge

1-23-23  
Date

Attest:   
\_\_\_\_\_  
County Clerk, Johnson County

  
1-23-23  
Date

RJM CONTRACTORS, INC.:

  
\_\_\_\_\_  
Authorized Representative of  
RJM CONTRACTORS, INC.

1/18/23  
Date

Printed Name: Trevor Browne Title: President

## Construction Management Pricing Form

Name of Bidder: RJM Contractors Inc.

The undersigned, in compliance with your Invitation to Bid for the management & construction on subject project, has received and examined the Contract Documents and all conditions regarding the project and having visited the site of the proposed project, hereby propose:

1. To hold my bid open for a maximum of forty five (45) days.
2. To enter and execute a contract, if awarded based on this proposal and to furnish guaranty bonds in accordance with the Supplementary General Conditions
3. To accomplish the work in accordance with all the contract documents.
4. To complete the work by the time stipulated in the Proposal Form and under the Supplementary General Conditions.
5. To accept the provisions of the Instructions to Bidders regarding deposition of Bid Security.

The following Addendum has been received. The modifications to the Contract Documents noted therein have been considered and all costs thereto are included in the Bid Price.

Addendum # 1 dated 10/25/22

Addendum # 2 dated 10/25/22

Addendum # 3 dated 11/1/22

Addendum # 4 dated 11/2/22

Addendum # 5 dated 11/4/22

Addendum # \_\_\_\_\_ dated \_\_\_\_\_

Addendum # \_\_\_\_\_ dated \_\_\_\_\_

Bid Amount:

A. Part 1 – Preconstruction Services (Para. VI-A.) including O/H & Profit

Written in Words: Fifteen Thousand and 00/100 Dollars

Numerical Dollars: \$15,000.00

B. **Part 2 (A) – General Conditions (12 Months)** (Para. VI-B.) including O/H & Profit

Written in Words: Three Hundred Ninety Three Thousand Five Hundred Eight and 00/100 Dollars

Numerical Dollars: \$ 393,508.00

C. **Part 2 (B) – Construction Management Fee (12 Months)**

Written in Words: Cost of work multiplied by five percent

Numerical Dollars: 5%

**Contractor O/H & profit (Change Order Markup):**

Percentage: 10%

The Sub-Contractors listed below (subject to final approval by the owner) shall be employed on this project.

Heating and Air Conditioning Cozy Air

Plumbing Clemens Plumbing

Electrical All-Tech Electric

Paving R2 Commercial Concrete

Upon notification of the acceptance of the proposal, the Undersigned agrees to execute a contract for the above work, for the above stated compensation. The Undersigned further agrees, if awarded the contract, to execute and deliver to the Owner within ten days after signing the contract, satisfactory bonds in the form of one hundred percent (100%) "Performance Bond", "Labor and Material Payment Bond", according to the laws of the State of Texas governing this construction work, in and amount equal to the construction sum (Part VI-A)

Project: Construction of 911 Call Center for Johnson County  
Cleburne, Texas  
Johnson County

The Undersigned hereby agrees to complete all work and improvements as specified in contract documents within calendar days, stated below, from the date of execution of the contract by the Owner and Contractor.

Part 1 within 30 calendar days Total days depends on plans availability and permit review by the city.  
The days listed are for bidding and review only.

Part 2 within 365 calendar days The listed days include Construction, "C of O", & Punch.  
Owner furniture, specialty vendors, close out documents, and and related punch required after such work may take additional time, usually 30-60 days. The goal will always be to finish this in the original 365 days as well.

Respectfully submitted,

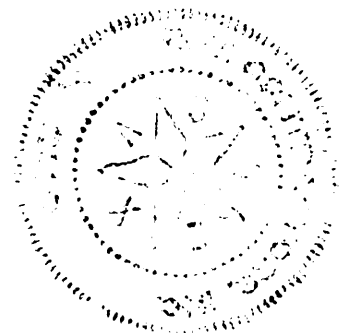
RJM Contractors Inc. 7616 Benbrook Parkway, Benbrook, TX 76126  
Name of Contracting Firm Address

By: Trevor Browne

Seal – if bid is by corporation

Note: Contractor to submit five (5) completed copies of the bid proposal.

Proposer must complete Attachments A&B



**ATTACHMENT A**

**Part II – Construction Phase Services  
12 Month duration**

<b>Personnel</b>	<b>Job Responsibility</b>	<b>Percentage of Time</b>	<b>Cost (\$) – 12 mos.</b>
<b>Project Manager</b>	Estimating, paperwork, Paperwork, Contracts, Etc.	50%	\$105,750.00
<b>Superintendent</b>	Scheduling, Safety, Coordination, Etc.	100%	\$155,100.00
<b>Field Personnel</b>	Assist superintendent, layout, Etc.	50%	\$ 54,558.00
<b>Office Personnel</b>			
Accounts Payable	John Biggs	10%	Figured as part of our fee
Accounts Recieveable	Ron Hampton	5%	Figured as part of our fee

## Attachment B

### List of General Conditions Costs\*

Item Description	Project Cost
Field staff vehicles, auto allowances, insurance and maintenance, fuel, etc.	\$ 12,000.00
Insurance & Builders Risk	\$ 31,000.00
Job Office	\$ 16,800.00
Computers, software, maintenance, IT Support, Printers	\$ 1,500.00
Copy machines, supplies and maintenance	-
Telephones, communications and radios	\$ 3,600.00
Stationary, messenger, postage, and misc. office supplies	-
Misc. Office Supplies	\$ 500.00
Drinking water/ice	\$ 500.00
First aid supplies	\$ 1,200.00
Field office travel	\$ 1,750.00
Project signage	\$ 500.00
Project photos	\$ 2,500.00
Portable toilets	\$ 4,500.00
Site water use (unless provided by owner or included in cost of work)	C.O.W.
Site electric use (unless provided by owner or included in cost of work)	C.O.W.
Dumpster use (unless provided by owner or included in cost of work)	C.O.W.
AGC, TEXO, ABC dues	Part of overall fee %
Jobsite safety incentive programs and employee drug testing	Part of overall fee %
Temporary fire extinguishers	\$ 250.00
Background Checks	C.O.W.
Project Scheduling	-
Quality Control Services	Part of overall fee %
Small Tools	\$ 1,500.00
Project Management Software and maintenance	-
Fencing (unless provided by owner or included in cost of work)	C.O.W.
<b>Total</b>	<b>\$ 393,508.00</b>

\*Items to be included any items not listed will be treated as cost of work and added as required.







**ADDITIONAL REMARKS SCHEDULE**

<b>AGENCY</b> Higginbotham Insurance Agency, Inc.		<b>NAMED INSURED</b> RJM Contractors, Inc. 7616 Benbrook Parkway Benbrook TX 76126	
<b>POLICY NUMBER</b>		<b>EFFECTIVE DATE:</b>	
<b>CARRIER</b>	<b>NAIC CODE</b>		

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

The General Liability and Automobile Liability policy includes a blanket automatic additional insured endorsement that provides additional insured status (Including Completed Ops) and General Liability, Automobile Liability and Workers' Compensation policy includes a blanket waiver of subrogation endorsement to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status.

The General Liability policy has a blanket Primary & Non Contributory endorsement that affords that coverage to certificate holders only where there is a written contract between the Named Insured and the certificate holder that requires such status

The Umbrella Liability and Excess Liability policies are follow form.

The General Liability, Automobile Liability and Workers Compensation policy includes an endorsement providing that 30 days notice of cancellation will be furnished to the certificate holder when required by written contract.

EXHIBIT E

GUARANTEED MAXIMUM PRICE

1/12/2023



Contractors, Inc.

Mr. Ralph McBroom  
Johnson County Purchasing  
1102 East Kilpatrick, Suite B  
Cleburne, TX 76031

RE: Johnson County 911 Center

Dear Mr. McBroom ,

It is a pleasure to submit a Guaranteed Maximum Price(GMP) estimate on the above referenced project per plans & specifications by Robert Durham Architecture dated 8/30/22. Our estimate includes the following:

<b>Division 1</b>	
Pre-Construction Cost	\$ 15,000.00
GC's	\$ 393,508.00
Survey	\$ 9,000.00
Final Clean	\$ 3,292.00
Temp Fencing	\$ 3,500.00
Barricades	\$ 5,000.00
Dumpsters(\$1,600 per month x 12 months)	\$ 19,200.00
Temp Utilities (water/electric) Allowance	\$ 10,000.00
<b>Division 2</b>	
Site Clearing/Earthwork	\$ 175,500.00
Lime Stabalization	\$ 29,000.00
Site Utilities	\$ 228,500.00
Finish Grade	\$ 10,000.00
Termite Control	\$ 995.00
Paving	Included in Concrete
Security Fence	\$ 108,375.00
Dumpster Enclosure	\$ 12,875.00
Pavement Markings	\$ 4,500.00
SWPPP/Erosion Control	\$ 5,230.00
Landscape/Irrigation Allowance	\$ 75,000.00
<b>Division 3</b>	
Concrete/Paving	\$ 515,800.00
Concrete Polishing/Finishing	\$ 12,847.00
<b>Division 4</b>	
Masonry/Brick Veneer/Stone	\$ 175,450.00
Brick vents/flashing	\$ 7,800.00
<b>Division 5</b>	
Structural/Misc. Steel/Joists/Decking	\$ 228,922.00
Erection	\$ 118,683.00
Lintels/Bollards	\$ 5,000.00
<b>Division 6</b>	
Glass Reinforced Gypsum Sheathing	Included in Drywall
Finish Carpentry	\$ 7,500.00
Cabinets/Millwork	\$ 25,000.00
Roof Blocking	\$ 4,550.00
Rough Carpentry	\$ 5,000.00
<b>Division 7</b>	
Building Insulation	\$ 7,466.00
Rigid Wall Insulation	\$ 3,000.00
Roofing/Roof Insulation/Gutters/Downspouts	\$ 162,100.00
Metal Roof/Wall Panels	\$ 64,800.00

7616 Benbrook Pkwy.

Benbrook, TX 76126

Phone 817.377.0971

Fax 817.377.0973



Contractors, Inc.

7616 Benbrook Pkwy.

Benbrook, TX 76126

Phone 817.377.0971


Fax 817.377.0973

Roofing/Rigid Roof Insulation		Incl. In Roofing
Sheetmetal Flashing/Trim/Blocking		Incl. In Roofing
Joint sealants/Waterproofing	\$	8,745.00
<b>Division 8</b>		
DFH(Steel/Wood)	\$	63,000.00
Install Labor	\$	4,320.00
Access Doors	\$	1,500.00
Glass/Glazing/Storefront	\$	212,665.00
<b>Division 9</b>		
Drywall/Framing/Ceilings	\$	256,500.00
Ceramic Tile , Base, & Carpet	\$	21,828.00
Tape/Bed/Paint	\$	51,985.00
<b>Division 10</b>		
Toilet Partition/Accessories	\$	9,400.00
Visual Boards	\$	3,000.00
Access Flooring	\$	28,842.00
Flagpoles	\$	34,500.00
Signage Allowance	\$	20,000.00
Metal Lockers	\$	15,545.00
Transaction Drawer	\$	10,000.00
FEC's	\$	1,600.00
<b>Division 11</b>		
Food Equipment/Appliance Allowance(includes labor & material)	\$	17,000.00
<b>Division 12</b>		
N/A	\$	-
<b>Division 13</b>		
N/A	\$	-
<b>Division 14</b>		
N/A	\$	-
<b>Division 15</b>		
Fire Sprinkler - Wet System	\$	41,500.00
HVAC	\$	160,160.00
Test & Balance	\$	2,620.00
Plumbing	\$	85,139.00
<b>Division 16</b>		
Electrical	\$	297,617.00
Fire Alarm	\$	11,619.00
<b>Division 17</b>		
By Owner	\$	-
<b>Contractor Contingency</b>		
Contractor Contingency	\$	75,000.00
Construction Fee on Cost of Work - 5%(excludes Pre-con/	\$	173,898.50
<b>General Conditions/Owner Contingency Costs)</b>		
Sub-Total	\$	4,060,376.50
Bond	\$	43,452.00
<b>Contractor Total</b>	<b>\$</b>	<b>4,103,828.50</b>
Owner's Contingency 10%	\$	388,647.80
<b>Total with Owner Contingency - GMP</b>	<b>\$</b>	<b>4,492,476.30</b>

**Bid Excludes:** Phone/Data, Security, Furniture, Testing, Access Control, Audio Visual, Intrusion/Video Surveillance, Permit, Design/Engineering Fees, Tape/Impact/Utility Fees, Any Item Not Specifically Listed and/or With No Pricing Above.

If you have any questions, please feel free to call.

Sincerely,

  
Trevor Browne