



MORE THAN ARCHITECTS

# ADDENDUM

NO. 3

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## TO THE DRAWINGS AND THE PROJECT MANUAL

**PROJECT NAME:** Fielder Road Modular Site

**CLIENT NAME:** Child Care Associates

**LOCATION:** Arlington, TX

**PROJECT NUMBER:** 01849-06-02

**PROPOSAL DATE:** May 23, 2025, 2:00 PM

**ADDENDUM DATE:** May 19, 2025

For additional information regarding this project, contact Corrie Hood at 800.687.1229.

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### THIS ADDENDUM INCLUDES:

Civil Items	0 Pages
Landscape Items	0 Pages
Architectural Items	29 Pages
Plumbing Items	0 Pages
Electrical Items	0 Pages

AND ALL ATTACHED REVISED DRAWING REFERENCES IN THE ADDENDUM

# Huckabee

a **MORE**group brand

Project Name: Fielder Road Modular Site  
Client: Child Care Associates  
Arlington, Texas  
Project Number: 1849-06-01



## ARCHITECTURAL ITEMS FOR ADDENDUM NO. 3

### NOTICE TO PROPOSERS:

- A. This Addendum shall be considered part of the contract documents for the above-mentioned project as though it had been issued at the same time and incorporated integrally therewith. Where provisions of the following supplementary data differ from those of the original contract documents, this Addendum shall govern and take precedence.
- B. Proposers are hereby notified that they shall make any necessary adjustments in their estimate on account of this Addendum. It will be construed that each Proposer's proposal is submitted with full knowledge of all modifications and supplemental data specified therein. Acknowledge receipt of this addendum in the space provided on the proposal form. Failure to do so may subject Proposer to disqualification.

**REFERENCE IS MADE TO THE DRAWINGS AND THE PROJECT MANUAL AS NOTED:**

### PROJECT MANUAL:

**AD No 3, Arch. Item 1:** To the Project Manual, Section 00 5200, "Agreement Form";  
Replace this section in its entirety.

**END OF ARCHITECTURAL ADDENDUM**

WE ARE **MORE.**

Architectural Items For  
Addendum No. 3  
Page 1 of 1

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**00 5200      CONTRACT**

This Contract is by and between Child Care Associates (Owner) and **[Full Legal Name of Contractor]** (Contractor). Owner and Contractor hereby agree as follows:

**ARTICLE 1 - THE WORK**

**1.01    Work**

- A. The Contractor must complete all Work as specified or indicated in the Contract Documents in accordance with the Contract Documents within the Contract Time. The Project is generally described as follows:
- B. CCA Fielder Road Modular Site which includes site improvements for a day care facility that will be constructed using modular building.
  - 1. The Site of the Work is located at 696 N Fielder Road, Arlington, Texas 76012.
  - 2. The modular building and concrete foundation below the building is work included under a separate contract.
- C. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project. The Work may include related services such as testing, start-up, and initial operations, all as required by the Contract Documents.

**ARTICLE 2 - OWNER'S PROJECT TEAM**

- 2.01 The Owner is Child Care Associates (CCA, or Owner).
- 2.02 The Design Professional (Architect, Engineer, and/or Designer) for this project is:  
Huckabee, Fort Worth, Texas
- 2.03 The Project Construction Manager (PCM) for this Project is:  
Pronghorn Flats Consulting, Fort Worth, Texas
- 2.04 The materials testing lab for this Project is:  
Kleinfelder
- 2.05 The Owner's Project Team (OPT) consists of the Owner, PCM, and the consultants, subconsultants, individuals, or entities directly or indirectly employed or retained by them to provide services to the Owner. Owner's Indemnitees described in Paragraph 7.12 include all members of the OPT.

**ARTICLE 3 - CONTRACT DOCUMENTS**

**3.01    Intent of Contract Documents**

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to

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complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the PCM.

- B. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- C. Contractor, and its Subcontractors and Suppliers, do not have nor will acquire title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by the Owner or its architects, consultants, and engineers.

### 3.02 Contract Documents Defined

- A. The Contract Documents consist of the following documents:
  - 1. This Contract.
  - 2. Performance bond.
  - 3. Payment bond.
  - 4. Specifications listed after this *Section 00 5200 Contract* in the Table of Contents or as specifically excluded in Paragraph 3.02.B.
  - 5. Drawings listed in the Sheet Index.
  - 6. Addenda.
  - 7. Exhibits to this Contract:
    - a. *Section 00 4200 Proposal Form*
  - 8. The following which may be delivered or issued on or after the Effective Date of the Contract:
    - a. Notice to Proceed.
    - b. Contract Amendments.
    - c. Change Orders.
    - d. Field Orders.
    - e. Work Change Directives.
- B. The following documents are not part of this Contract and are provided for information only:
  - 1. *Section not used.*

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## ARTICLE 4 - CONTRACT TIMES

### 4.01 Contract Times

- A. The Work will be completed as specified in the *Section 01 1400 Work Restrictions*.

### 4.02 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **\$200** for each day that expires after the Contract Time for Substantial Completion.
- B. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this agreement.

### 4.03 Delays in Contractor's Progress

- A. Contractor is entitled to an equitable adjustment in the Contract Times if the Owner directly delays, disrupts, or interferes with the performance or progress of the Work. The Contractor agrees to make no claim for damages for delay in the performance of the Contract occasioned by an act or omission to act of the Owner and agrees that the extension of time provides an equitable adjustment.
- B. Contractor is not entitled to an adjustment in Contract Price or Contract Times for delays, disruptions, or interference caused by or within the control of Contractor or its Subcontractors or Suppliers.
- C. Contractor is only entitled to an adjustment of the Contract Times for specific delays, disruptions, and interference to the performance or progress of the Work that can be demonstrated to directly impact the ability of the Contractor to complete the Work within the Contract Times. No adjustments in Contract Times are allowed for delays on components of the Work which were or could have been completed without impacting the Contract Times.
- D. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an

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equitable adjustment in Contract Times, but no adjustment in the Contract Price, unless mutually agreed upon by both parties.

- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or its Subcontractors or Suppliers.

#### 4.04 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the PCM for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the PCM.
- B. The Contractor shall update and submit the progress schedule to the PCM each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

### ARTICLE 5 - CONTRACT PRICE

#### 5.01 Payment

- A. Owner will pay Contractor for completion of the Work in accordance with the Contract Documents at the prices shown in *00 4200 Proposal Form* following this Contract (the "Contract Price"). The Contract Price is a lump sum amount that Owner shall pay for all Work, subject to adjustment as provided herein.

### ARTICLE 6 - BONDS AND INSURANCE

#### 6.01 Performance, Payment, and Other Bonds

- A. Furnish performance and payment bonds, each in an amount equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract Documents. These bonds are to remain in effect until 1 year after the date of final payment. Furnish other bonds as required by the Contract Documents.
- B. Provide bonds in the form prescribed by the Contract Documents from sureties named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. Provide bonds required by the Contract Documents from surety companies that are duly licensed or authorized to provide bonds in the state of Texas.

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- D. Notify PCM immediately if the surety on bonds furnished by Contractor:
    - 1. Is declared bankrupt, or becomes insolvent;
    - 2. Has its right to do business in Texas terminated; or
    - 3. Ceases to meet the requirements of Paragraphs 6.01.B or 6.01.C.
  - E. Provide a bond and surety which comply with the requirements of Paragraphs 6.01.B and 6.01.C within 20 days after the event giving rise to this notification.
  - F. Contractor is to use amounts paid by Owner to Contractor under the Contract for the performance of the Contract and to satisfy claims against the payment bond.
  - G. Notify the PCM of claims filed against the payment bond. Notify the claimant and PCM of undisputed amounts and the basis for challenging disputed amounts when a claimant has satisfied the conditions prescribed by Laws and Regulations. Promptly pay undisputed amount.
  - H. Owner is not liable for payment of costs or expenses of claimants under the payment bond. Owner has no obligations to pay, give notice, or take other action to claimants under the payment bond.
  - I. Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 14 if Contractor fails to obtain or maintain required bonds.
  - J. Contractor will provide a copy of the payment bond to Subcontractors, Suppliers, or other persons or entities claiming to have furnished labor or materials used in the performance of the Work that request this information in accordance with Laws and Regulations.

#### 6.02 Insurance

- A. Contractor shall provide insurance before starting Work.
  - 1. Workers' Compensation: as provided by Texas law, with the policy endorsed to provide a waiver of subrogation as to City of Arlington; Employer's liability insurance of not less than \$1,000,000 for each accident or disease
  - 2. Employer's Liability
    - a. \$1,000,000 per occurrence
    - b. \$1,000,000 per injury
    - c. \$1,000,000 per occupational disease
  - 3. Commercial General Liability
    - a. \$1,000,000 per occurrence
    - b. \$2,000,000 aggregate
  - 4. Business Automobile Liability
    - a. \$1,000,000 combined single limit

5. Builder's Risk Insurance:

- a. CONTRACTOR shall obtain, at CONTRACTOR's expense, Builder's Risk Insurance upon the Work including materials delivered and labor performed, providing all-risk coverage including flood (if located in a flood zone) in an amount of insurance equal to 100% of the completed value of this Project. The policy so issued in the name of CONTRACTOR shall also name OWNER as loss payee as their respective interests may appear. Contractor shall be responsible for payment of any deductibles under the Builder's Risk policy.
- b. Limits may be satisfied by a combination of primary and excess/umbrella limits.

6. The insurance required under this Contract shall:

- a. Be placed with insurers with a best rating of no less than A: VII. The company must also be dully authorized to transact business in the State of Texas.
- b. Be written on an "occurrence" basis.
- c. The General Liability policy shall name the CITY as additional insured for premises/operations and products/completed operations.
- d. Companies issuing the insurance policies and user shall have no recourse against City of Arlington for any payment of any premiums or assessments for any deductible, as all such premiums and deductibles are the sole responsibility and risk of SUBRECIPIENT's contractors.
- e. Certificates of Insurance and endorsements effecting coverages required by this section be forwarded to: City of Arlington, Risk Management, 101 W. Abram Street, Arlington, Texas 76010

## **ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

### **7.01 Supervision and Superintendence**

- A. Supervise, inspect, and direct the performance of the Work in accordance with the Contract Documents. Contractor is solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. Provide a competent resident superintendent acceptable to the Owner. The resident superintendent or acceptable qualified assistant is to be present at all times when Work is being done. Do not replace this resident superintendent except under extraordinary circumstances. Provide a replacement resident superintendent equally competent to the previous resident superintendent if replacement is required. Notify the Owner prior to replacing the resident superintendent and obtain Owner's consent to the change in resident superintendent.



7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor must take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

7.03 Services, Materials, and Equipment

- A. Provide services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work, whether or not these items are specifically called for in the Contract Documents.
- B. Provide new materials and equipment to be incorporated into the Work. Provide special warranties and guarantees required by the Contract Documents. Provide satisfactory evidence, including reports of required tests, as to the source, kind, and quality of materials and equipment as required by the Contract Documents or as requested by the PCM.
- C. Store, apply, install, connect, erect, protect, use, clean, and condition materials and equipment in accordance with instructions of the applicable Supplier, unless otherwise required by the Contract Documents.

7.04 Subcontractors and Suppliers

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. All Subcontractors and Suppliers must be acceptable to Owner.

7.05 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

7.06 Licenses, Fees, and Permits

- A. Contractor pays all license fees and royalties and assumes all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor obtains and pays for all construction permits and licenses unless stated otherwise in the Contract Documents. Contractor pays governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time the Contractor's Proposal is submitted. Owner is to assist Contractor in obtaining permits and licenses when required to do so by applicable Laws and Regulations.

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7.07 Laws and Regulations

- A. Contractor is required to give notices and comply with Laws and Regulations applicable to the performance of the Work. Owner is not responsible for monitoring Contractor's compliance with Laws or Regulations except where expressly required by applicable Laws and Regulations.
- B. Contractor pays costs resulting from actions taken by Contractor that are contrary to Laws or Regulations. Contractor is not responsible for determining that the design aspects of the Work described in the Contract Documents are in accordance with Laws and Regulations.
- C. Owner or Contractor may give notice to the other party of changes in Laws or Regulations that may affect the cost or time of performance of the Work, including:
  - 1. Changes in Laws or Regulations affecting procurement of permits; and
  - 2. Sales, use, value-added, consumption, and other similar taxes which come into effect after Contractor's Proposal is submitted or when Contractor negotiates the Contract Price.
- D. Contractor may submit a Change Proposal or Owner may initiate a claim within 30 days of this notice if Owner and Contractor are unable to agree on entitlement to or on the amount or extent of adjustments in Contract Price or Contract Times resulting from these changes.

7.08 Taxes

- A. Contractor is responsible for all taxes and duties arising out of the Work. The Owner generally qualifies as a tax-exempt agency as defined by the statutes of the State of Texas and is usually not subject to any city or state sales or use taxes, however certain items such as rented equipment may be taxable even though Owner is a tax-exempt agency. Contractor is responsible for including any applicable sales and use taxes in the Contract Price and is responsible for complying with all applicable statutes and rulings of the Texas State Comptroller. Pay sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations. Provide copies of any audits by the Texas State Comptroller of Contractor's payment of sales taxes applicable to transactions under this Contract. Further, in consideration of the rights, duties, and obligations contained herein, Contractor waives confidentiality of audits conducted by the Texas State Comptroller pertaining to transactions under this Contract and authorizes the Texas State Comptroller, upon request of Owner, to release to Owner copies of Contractor's audits pertaining to transactions under this Contract.

7.09 Safety and Protection

- A. Contractor is solely responsible for initiating, maintaining, and supervising safety precautions and programs in connection with the Work. This responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in

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the performance of their Work, nor for compliance with applicable safety Laws and Regulations.

- B. Contractor is to take necessary precautions for the safety of persons on the Site or who may be affected by the Work, and provide the necessary protection to prevent damage, injury, or loss to:
  - 1. Work and materials and equipment to be incorporated in the Work, whether stored on or off the Site; and
  - 2. Other property at or adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- C. Comply with applicable Laws and Regulations relating to the safety and protection of persons or property. Erect and maintain necessary safeguards for safety and protection. Notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site when prosecution of the Work may affect them. Cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
  - 1. Comply with requirements of Underground Facility Damage Prevention and Safety Act, as required by Laws and Regulations.
  - 2. Comply with all applicable safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).
- D. Contractor's duties and responsibilities for safety and protection of persons or the Work or property at or adjacent to the Site continues until Work is completed and resumes whenever Contractor returns to the Site to fulfill warranty or correction obligations or to conduct other tasks.

#### 7.10 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective.

#### 7.11 Correction Period

- A. Promptly correct defective Work without cost to Owner for 1 year after the date of Substantial Completion or longer periods of time prescribed by the terms of the Contract Documents.
- B. Promptly correct damages to the Site or adjacent areas that Contractor has arranged to use through construction easements or other agreements. Promptly correct damages to Work or the work of others. Make corrections without cost to Owner.

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- C. The correction period is extended for an additional period of 1 year for defective Work corrected after the date of Substantial Completion or after the accepted date the correction period starts to run as described in Paragraph 7.11.A. This extended correction period starts to run when defective Work has been satisfactorily corrected.

7.12 Indemnification

- A. TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, AND IN ADDITION TO ANY OTHER OBLIGATIONS OF CONTRACTOR UNDER THE CONTRACT OR OTHERWISE, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, AND CITY OF ARLINGTON AND THEIR RESPECTIVE EMPLOYEES, AGENTS, REPRESENTATIVES, AND CONSULTANTS (THE INDEMNITEES) FROM AND AGAINST ALL CLAIMS AND INDEMNIFIED COSTS ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, ACTION, LOSS, OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO DAMAGE TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM BUT ONLY TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF CONTRACTOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, AND ANYONE FOR WHOM CONTRACTOR IS LEGALLY RESPONSIBLE.**

**NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER AND ITS RESPECTIVE EMPLOYEES, AGENTS, REPRESENTATIVES, AND CONSULTANTS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY, SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS OR VENDORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE, STRICT LIABILITY OR FAULT OF OWNER AND/OR ITS RESPECTIVE EMPLOYEES, AGENTS, REPRESENTATIVES, AND CONSULTANTS, IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER AND/OR ITS RESPECTIVE EMPLOYEES, AGENTS, REPRESENTATIVES, AND CONSULTANTS FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, STRICT LIABILITY, OR FAULT WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEES OR AN EMPLOYEE OF ANY OF ITS SUBCONTRACTORS OR VENDORS.**

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- B. The indemnification obligation under Paragraph 7.12.A is not limited by the amount or type of damages, compensation, or benefits payable by or for the Contractor, Subcontractors, Suppliers, or other individuals or entities under workers' compensation acts, disability benefit acts, or other employee benefit acts in claims against the Indemnitees by an employee or the survivor or personal representative of employee of Contractor, Subcontractors, Suppliers, or other individuals or entities.
  - C. The indemnification obligations of Contractor under Paragraph 7.12.A do not extend to the liability of PCM or Design Professional arising out of the preparation of the Contract Documents or giving directions or instructions, or failing to give them, to the extent they are obligated to do so if that is the primary cause of the injury or damage.

## **ARTICLE 8 - OWNER'S RESPONSIBILITIES**

### **8.01 Owner's Responsibilities**

- A. Owner will issue all communications to Contractor through PCM.
- B. Owner will make payments to Contractor as provided in this Contract.
- C. Owner will provide Site and easements required to construct the Project.
- D. Owner will have sole authority and responsibility for coordination of the performance of other work at or adjacent to the Site if Owner intends to contract with others for such work, unless stated otherwise in the Contract Documents.
- E. The Owner will be responsible for performing inspections and tests required by applicable codes unless stated otherwise in the Contract Documents.
- F. The Owner will not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. Owner's employees and representatives will comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed while at the Site.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

### **8.02 PCM's Responsibilities**

- A. PCM is Owner's representative. The duties and responsibilities and the limitations of authority of PCM as Owner's representative are described in the Contract Documents.

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- B. PCM is to observe the Work to check the quality and quantity of Work, implement Owner's quality assurance program and administer the Contract as Owner's representative as described in the Contract Documents.

8.03 Design Professional's Responsibilities

- A. Design Professional will make visits to the Site at intervals appropriate to the various stages of construction. Design Professional will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- B. Design Professional has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.
- C. Design Professional will render decisions regarding the requirements of the Contract Documents and judge the acceptability of the Work.

8.04 Limitations on Owner's Authority and Responsibilities

- A. Owner is not responsible for the acts or omissions of Contractor or its Subcontractors or Suppliers. No actions or failure to act, or decisions made in good faith to exercise or not exercise the authority or responsibility available under the Contract Documents creates a duty in contract, tort, or otherwise of the Owner to the Contractor or its Subcontractors or Suppliers.
- B. Owner and its agents and representatives, including but not limited to PCM, will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

**ARTICLE 9 - AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK**

9.01 Amending and Supplementing the Contract Documents

- A. The Contract Documents may be modified by a Contract Amendment, Change Order, Work Change Directive, or Field Order.
  - 1. Contract Amendment: Owner and Contractor may modify the terms and conditions of the Contract Documents without the recommendation of the Design Professional using a Contract Amendment.
  - 2. Change Order: All changes to the Contract Documents that include a change in the Contract Price or the Contract Times for previously authorized Work, or changes to the Work requiring Design Professional's approval must be made by a Change Order. A Change Order may also be used to establish modifications of the Contract Documents that do not affect the Contract Price or Contract Times.

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3. Work Change Directive: A Work Change Directive does not change the Contract Price or the Contract Times, but is evidence that the parties expect that the modifications ordered or documented by a Work Change Directive are to be incorporated in a subsequently issued Change Order following negotiations on the Contract Price and Contract Times. Contractor must submit a Change Proposal seeking an adjustment of the Contract Price or the Contract Times no later than 30 days after the completion of the Work set out in the Work Change Directive.
  4. Field Order: Owner or PCM may authorize minor changes in the Work that do not change the Contract Price or Contract Times using a Field Order. Owner or PCM may issue a Field Order for non-technical, administrative issues. If Contractor believes that a Field Order or any other instruction from Owner or PCM justifies an adjustment in the Contract Price or Contract Times before proceeding with the Work described in the Field Order.
- B. Perform added or revised Work under the applicable provisions of the Contract Documents for the same or similar Work unless different Drawings, Specifications, or directions are provided in the Modification.

9.02 Change of Contract Price

- A. The Contract Price can only be changed by a Change Order.
- B. An adjustment in the Contract Price is to be determined as follows:
1. By applying unit prices to the quantities of the items involved where the Work involved is covered by unit prices in the Contract Documents;
  2. By a mutually agreed lump sum where the Work involved is not covered by unit prices in the Contract Documents; or
  3. Payment based on the actual cost of the Work for labor, materials, construction equipment and subcontract work, plus a Contractor's fee for overhead and profit.
    - a. Contractor's fee is 15 percent of the actual cost of the Work for labor, materials, and construction equipment for work performed directly by the Contractor and 5 percent for work performed by Subcontractors.
    - b. Subcontractor's fee is 15 percent for the Subcontractor's actual cost of the Work for labor, materials, and construction equipment.

9.03 Change of Contract Times

- A. The Contract Times can only be changed by Change Order. An adjustment of the Contract Times is subject to the limitations described in Paragraph 4.03.

9.04 Change Proposals

- A. Submit a Change Proposal to the PCM to request an adjustment in the Contract Price or Contract Times.

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- B. PCM is to advise Owner regarding the Change Proposal. Owner is to review each Change Proposal and Contractor's supporting data, and within 30 days after receipt of the documents, direct the PCM to either approve or deny the Change Proposal in whole or in part. PCM is to issue a Change Order or Field Order for an approved Change Proposal. The Contractor may deem the Change Proposal to be denied if PCM does not act on the Change Proposal within 30 days.

9.05 Execution of Change Orders

- A. A Change Order is deemed to be in full force as if executed by Contractor if the Contractor refuses to execute a Change Order that is required to be executed under the terms of this Contract.

9.06 Notice to Surety

- A. Notify the surety of Modifications affecting the general scope of the Work, changes in the provisions of the Contract Documents, or changes in Contract Price or Contract Times. Adjust the amount of each bond when Modifications change the Contract Price.

**ARTICLE 10 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

10.01 Differing Conditions Process

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other Underground Facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and PCM in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so. IF CONTRACTOR PERFORMS WORK IN THE AFFECTED AREA WITHOUT NOTIFYING PCM OR THE OWNER OF THE DIFFERING SITE CONDITIONS, THEN CONTRACTOR WAIVES THE RIGHT FOR AN EQUITABLE ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT SUM.
- B. After receipt of written notice, PCM will promptly:
1. Review the subsurface or physical condition in question;
  2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
  3. Determine whether the condition falls within the differing site condition as stated herein;



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4. Obtain any pertinent cost or schedule information from Contractor;
  5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
  6. Advise Owner in writing of Design Professional's findings, conclusions, and recommendations.
- C. After receipt of Design Professional's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Design Professional's written findings, conclusions, and recommendations, in whole or in part.

## **ARTICLE 11 - CLAIMS AND DISPUTE RESOLUTION**

### **11.01 Claims Process**

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the PCM promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.
- E. The prevailing party in any dispute shall be entitled to recover reasonable and necessary attorneys' fees, reasonable and necessary expert fees and expenses, arbitration fees and costs, and court costs, in addition to any damages. As used in this agreement, the term "prevailing party" means the party determined by the arbitrator(s) or court to have most substantially prevailed in their claims and defenses.

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## **ARTICLE 12 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK**

### **12.01 Tests and Inspections**

- A. The Owner and its representatives will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give PCM timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of PCM, Contractor shall, if requested by PCM, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

### **12.02 Defective Work**

- A. Contractor shall ensure that the Work is not defective.
- B. The Owner and PCM have the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which the Owner or PCM has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

## **ARTICLE 13 - PAYMENTS TO CONTRACTOR**

### **13.01 Progress Payments**

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form acceptable to the Owner and PCM. The unit price breakdown submitted with the proposal will be used for unit price work. Contractor shall break lump sum items into units that will allow for measurement of Work in progress.

### **13.02 Applications for Payments:**

- A. Contractor will submit payment applications to the PCM in a form acceptable to the PCM and no more frequently than monthly. Payment applications will be based upon the percentage of completion of the work in accordance with the Schedule of

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Values and shall be prepared and signed by Contractor accompanied by supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the payment application. Contractor shall submit a statutory conditional waiver and release for itself and each subcontractor or supplier along with each payment application.

- B. Beginning with the second payment application, each application shall include statutory conditional waiver and release for the prior period for which payment has been received stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior payment applications.

13.03 Retainage

- A. Progress payments will be made in an amount equal to 90 percent of the total earned value to date for completed Work and properly stored materials. The remaining 10 percent of the total earned value to date will be held as retainage.

13.04 Not used.

13.05 Owner will pay the remainder of the Contract Price as recommended by PCM in accordance with the General Conditions upon Final Completion and acceptance of the Work.

13.06 Review of Applications

- A. Within 10 days after receipt of each payment application, the PCM will either indicate in writing a recommendation for payment and present the payment application to Owner or return the payment application to Contractor indicating in writing PCM's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the payment application.
- B. PCM will recommend reductions in payment (set-offs) which, in the opinion of the PCM, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work; incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work; or liquidated damages that have accrued as a result of Contractor's failure to complete the Work; or for defective Work not corrected, until the cause for such order has been eliminated.

13.07 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

#### 13.08 Substantial Completion

- A. The Contractor shall notify Owner and PCM in writing that the Work is substantially complete and request the PCM issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and PCM an initial draft of punch list items to be completed or corrected before final payment.
- B. PCM will make an inspection of the Work with the Owner, Design Professional, and Contractor to determine the status of completion. If PCM does not consider the Work substantially complete, PCM will notify Contractor, Design Professional, and Owner in writing giving the reasons therefor.
- C. PCM will deliver to Owner a certificate of substantial completion which fixes the date of Substantial Completion if PCM considers the Work substantially complete and include a punch list of items to be completed or corrected before final payment.

#### 13.09 Final Inspection

- A. PCM will make a final inspection upon notice from Contractor that the entire is complete. PCM will notify Contractor of Work determined to be incomplete or defective. Immediately take corrective measures to complete the Work and correct defective Work.

#### 13.10 Final Payment

- A. Contractor shall make application for final payment after completing required corrections identified during the final inspection and delivering items and documents required by the Contract Documents. Provide the following with the final payment application:
  - 1. Consent of Surety (if any) to Final Payment acknowledging unsettled disputes; and
  - 2. Bills Paid Affidavit from Contractor identifying all Subcontractors and Suppliers on the project, and the amount unpaid, if any, to each.
  - 3. A statutory, conditional lien release for Final Payment and a statutory unconditional lien release for all payments received for final payment.
- B. PCM is to either recommend payment of the final payment application to Owner if PCM is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled or notify the Contractor of PCM's reasons for not recommending final payment.
- C. The Work is complete, subject to surviving obligations, when it is ready for final payment as established by the PCM's recommendation of payment of the final payment application to Owner and the issuance of a certificate of final completion.
- D. The Owner is to pay the amount of final payment recommended by the PCM within 30 days after receipt of the final payment application and accompanying documentation from the PCM.

#### 13.11 Waiver of Claims

- A. The making of final payment does not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from:
  - 1. Unsettled Liens or claims for non-payment;
  - 2. Defective Work appearing after final inspection pursuant to Paragraph 13.07;
  - 3. Contractor's failure to comply with the Contract Documents or the terms of specified special guarantees; or
  - 4. Contractor's continuing obligations under the Contract Documents.
- B. Contractor waives claims and rights against Owner by accepting final payment.

### **ARTICLE 14 - SUSPENSION OF WORK AND TERMINATION**

#### 14.01 Owner May Suspend Work

- A. Owner may suspend the Work or a portion of the Work for a period of not more than 90 consecutive days, at any time and without cause, by notice to Contractor. This notice fixes the date on which Contractor is to resume Work. Contractor is entitled to adjustments in the Contract Price and Contract Times directly attributable to this suspension. Contractor shall submit a Change Proposal seeking an adjustment no later than ten (10) days after the date fixed for resumption of Work.

#### 14.02 Owner May Terminate for Cause

- A. The occurrence of one or more of the following events constitutes a default by Contractor and justifies termination for cause:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents, including failure to supply sufficient skilled workers or suitable materials or equipment;
  - 2. Failure to adhere to the progress schedule;
  - 3. Failure of the Contractor to provide a satisfactory replacement bond or insurance in the event either is lost or cancelled;
  - 4. Failure of Contractor to maintain financial solvency to adequately complete the Project as indicated by one or more of the following:
    - a. A petition of bankruptcy is filed by or against Contractor,
    - b. Contractor is adjudged as bankrupt or insolvent,
    - c. Contractor or surety makes a general assignment for the benefit of creditors,
    - d. A receiver is appointed for the benefit of Contractor's creditors, or
    - e. A receiver is appointed on account of Contractor's insolvency;

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5. Contractor's disregard of Laws or Regulations of public bodies having jurisdiction; or
  6. Contractor's repeated disregard of the authority of PCM or the Owner.
- B. Contractor and surety must provide adequate assurance of future performance in accordance with the Contract Documents that is satisfactory to Owner if Contractor is believed to be in financial distress due to the existence of one or more of the indicators listed in Paragraph 14.02.A.4. Owner may terminate this Contract if Contractor and surety fail to provide adequate documentation satisfactory to Owner within 10 days of PCM's request for this information.
  - C. Owner may declare Contractor to be in default, give notice to Contractor and surety that the Contract is terminated, and enforce the rights available to Owner under the performance bond after giving Contractor and surety 10 days' notice that one or more of the events identified in Paragraph 14.02.A has occurred.
  - D. Owner may exclude Contractor from the Site, take possession of the Work, incorporate the materials and equipment stored, and complete the Work as Owner may deem expedient if Owner has terminated the Contract for cause.
  - E. Owner may elect not to proceed with termination of the Contract under this Paragraph 14.02 if Contractor begins to correct the cause for termination within 7 days of receipt of notice of intent to terminate.
  - F. Contractor is not entitled to receive further payments until the Work is completed if Owner proceeds as provided in this Paragraph 14.02. The amount of the Contract Price remaining is to be paid to the Contractor if the unpaid balance exceeds the cost to complete the Work. This cost to complete the Work may include related claims, costs, losses, damages, and the fees and charges of engineers, architects, attorneys, and other professionals retained by Owner. Contractor shall pay the difference to Owner if the cost to complete the Work including related claims, costs, losses, and damages exceeds the unpaid balance of the Contract Price. Claims, costs, losses, and damages incurred by Owner are to be reviewed as to their reasonableness and incorporated in a Change Order by the PCM. Owner is not required to obtain the lowest price for the Work performed when exercising its rights or remedies under this paragraph.
  - G. Termination does not affect the rights or remedies of Owner against Contractor or against surety under the payment bond or performance bond. Owner does not release Contractor from liability by paying or retaining money due Contractor.
- 14.03 Owner May Terminate For Convenience
- A. Owner may terminate the Contract without cause after giving 7 days' notice to Contractor of the effective date of termination. Contractor is to be paid for the following if Owner terminates for convenience:
    1. Work completed in accordance with the Contract Documents prior to the effective date of termination;

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2. Equipment and materials delivered to the Site or accepted by Owner for future delivery.
  3. Actual costs sustained prior to the effective date of termination for Work in progress, plus a fee calculated in accordance with Paragraph 9.02.B.3; and
  4. Reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. No payment is payable to Contractor for loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from this termination.

**14.04 Contractor May Stop Work or Terminate**

- A. Contractor may terminate the Contract and issue a Change Proposal requesting payment from Owner on the same terms as provided in Paragraph 14.03 after 10 days' written notice to PCM provided that, through no act or fault of Contractor:
1. The Work is suspended for more than 90 consecutive days by Owner and Owner does not remedy this suspension within 10 days after receipt of the notice;
  2. PCM fails to act on a payment application within 30 days after it is submitted; or
  3. Owner fails to pay Contractor sums determined to be due, other than the final payment, within 30 days after payment is recommended by PCM.
- B. Contractor may stop Work, without prejudice to other rights or remedies in lieu of terminating the Contract, if PCM has failed to act on a payment application within 30 days after it is submitted or Owner has failed to pay Contractor within 30 days after payment is recommended by PCM. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times for damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

**ARTICLE 15 - CONTRACTOR'S REPRESENTATIONS**

**15.01 The Contractor makes the following representations:**

- A. The Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Proposal Documents.
- B. The Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. The Contractor is familiar with Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. The Contractor has carefully studied the following Site-related reports and drawings:
1. Geotechnical Data Reports regarding subsurface conditions at or adjacent to the Site;

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2. Drawings of physical conditions relating to existing surface or subsurface structures at the Site;
  3. Underground Facilities referenced in reports and drawings;
  4. Reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site; and
  5. Technical Data related to each of these reports and drawings.
- E. The Contractor has considered the:
1. Information known to Contractor;
  2. Information commonly known to contractors doing business in the locality of the Site;
  3. Information and observations obtained from visits to the Site; and
  4. The Contract Documents.
- F. The Contractor has considered the items identified in Paragraphs 15.01.D and 15.01.E with respect to the effect of such information, observations, and documents on:
1. The cost, progress, and performance of the Work;
  2. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
  3. Contractor's safety precautions and programs.
- G. Based on the information and observations referred to in the preceding paragraphs, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- H. The Contractor is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- I. The Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- J. The Contractor has given PCM and the Owner written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution provided by the PCM and the Owner is acceptable to the Contractor.



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- K. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - L. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### **ARTICLE 16 - OTHER REQUIREMENTS**

16.01 Ineligibility to Receive State Grants or Loans or Receive Payment on State Contracts: As required by Tex. Fam. Code Section 231.006, Contractor certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

16.02 Workers' Compensation Insurance

- A. By signing this Agreement, Contractor certifies that it provides workers' compensation insurance coverage for all employees employed on this Project pursuant to Tex. Lab. Code Section 406.096(a).
- B. As required by Section 406.096(b), Contractor must require each Subcontractor to certify in writing to the Contractor that the Subcontractor provides workers' compensation insurance coverage for all of the employees it employs on this Project. Contractor must provide these certifications to the Owner within [10] days of the Effective Date of the Agreement.

16.03 Prohibition on Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations

- A. Tex. Gov't Code Chapter 2252, Subchapter F, prohibits the award of governmental contracts to companies engaged in business with Iran, Sudan, or foreign terrorist organizations.
- B. By signing this Agreement, Contractor certifies that it is not ineligible to be awarded this Contract under Chapter 2252, Subchapter F.

16.04 Prohibition on Contracts with Certain Companies that Boycott Israel

- A. Tex. Gov't Code Chapter 2270 prohibits the award of governmental contracts to companies boycotting Israel.
- B. By signing this Agreement, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

16.05 Davis-Bacon Act

- A. This project is subject to the Davis-Bacon Act and Related Act wage provisions.
- B. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally

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prevailing wages and fringe benefits for corresponding work on similar projects in the area.

1. State: Texas
2. Construction Type: Building
3. County: Tarrant County in Texas

16.06 Eligibility exclusions

- A. A contractor or subcontractor is not eligible for this Contract or any subcontracts with the Contractor if the entity has been suspended, debarred, and/or excluded from the United States System for Award Management (SAM).

16.07 Build America, Buy America Act (BABA)

- A. The Contractor acknowledges to and for the benefit of the Owner that it understands the goods and services under this Agreement are being partially funded with federal monies made available by the Community Development Block Grant (CDBG) Program that have statutory requirements commonly known as “Build America, Buy America;” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the Requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Owner resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, or any damages owed to the Owner).
- B. Contractor will provide the following reporting for BABA:
  1. Include a statement with each invoice to Owner that certifies that all incorporated materials meet BABA standards.
  2. Include a final certification letter with request for final payment.

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**ARTICLE 17 - MISCELLANEOUS**

**17.01 Cumulative Remedies**

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available to the Owner or Contractor by these General Conditions are in addition to, and are not a limitation of, the rights and remedies which are otherwise imposed or available by:
  - 1. Laws or Regulations;
  - 2. Special warranties or guarantees; or
  - 3. Other provisions of the Contract Documents.
- B. The provisions of this Paragraph 16.01 are as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

**17.02 Limitation of Damages**

- A. Owner's Indemnitees are not liable to Contractor for consequential damages, including but not limited to costs, losses, or damages sustained by Contractor associated with home office overhead, loss of productivity or lost profits on other projects or anticipated projects.

**17.03 No Waiver**

- A. The failure of Owner or Contractor to enforce any provision of this Contract does not constitute a waiver of that provision, affect the enforceability of that provision, or the enforceability of the remainder of this Contract.

**17.04 Severability**

- A. If a court of competent jurisdiction renders a part of this Contract invalid or unenforceable, that part is to be severed and the remainder of this Contract continues in full force.

**17.05 Survival of Obligations**

- A. Representations, indemnifications, warranties, guarantees, and continuing obligations required by the Contract Documents survive completion and acceptance of the Work or termination of the Contract.

**17.06 No Third Party Beneficiaries**

- A. Nothing in this Contract can be construed to create rights in any entity other than the Owner and Contractor. Neither the Owner nor Contractor intends to create third party beneficiaries by entering into this Contract.

**17.07 Assignment of Contract**

- A. This Contract may not be assigned in whole or in part by the Contractor without the consent of the Owner.

17.08 No Waiver of Sovereign Immunity

- A. The Owner has not waived its sovereign immunity by entering into and performing its obligations under this Contract.

17.09 Controlling Law

- A. This Contract is governed by the laws of the State of Texas without regard to its conflicts of laws. Venue for legal proceedings lies exclusively in Tarrant County, Texas.

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IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

The Effective Date of the Contract is **[date to be inserted at the Time of Contract Execution]**

Owner  
: Child Care Associates  
*(typed or printed)*

Contractor  
: **[Name of Contractor]**  
*(typed or printed)*

By: \_\_\_\_\_  
*(signature)*

By: \_\_\_\_\_  
*(signature)*

Name: \_\_\_\_\_  
*(typed or printed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Attest: \_\_\_\_\_  
*(signature)*

Attest: \_\_\_\_\_  
*(signature)*

Address for giving notice:

Address for giving notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated representative:  
Name  
: \_\_\_\_\_

Designated representative:  
Name  
: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

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Telephone  
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Telephone  
: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_  
*(Attach evidence of authority to sign.)*

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**END OF SECTION**