AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT FOR FACILITIES AND RELATED IMPROVEMENTS

Between

CITY OF FRISCO

And

BLUE STAR STADIUM, INC.,
BLUE STAR HQ, INC., and
BLUE STAR FRISCO, L.P.

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AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT FOR FACILITIES AND RELATED IMPROVEMENTS

THE MASTER DEVELOPEMENT AGREEMENT FOR FACILITIES AND RELATED IMPROVEMENTS executed to be effective on the 12th day of August, 2013 (the "Agreement") is hereby amended and restated as of this _____ day of _____, 2016 ("Effective Date"), by and between the CITY OF FRISCO, TEXAS, a municipal corporation of the State of Texas and a home rule city ("City"') and BLUE STAR STADIUM, INC., a Texas corporation ("Blue Star"), BLUE STAR HQ, INC., a Texas corporation ("Blue Star HQ") and BLUE STAR FRISCO, L.P., a Texas limited partnership ("Blue Star Frisco"). City, Blue Star, Blue Star HQ and Blue Star Frisco are sometimes referred to herein collectively as the ("Parties") or singularly as a ("Party").

A. The City has created a Tax Reinvestment Zone Number One ("TIRZ#1") within which master-planned projects have been constructed, and within which significant public buildings, public structured and surface parking and public infrastructure have, and in the future may be, constructed and to effectuate the foregoing, the Parties desire to expand the boundaries of TIRZ#1 as provided herein.

B. The City and Blue Star have entertained discussions relating to the development, financing and operation of the Dallas Cowboys (the "Team") world corporate headquarters, an indoor stadium, and outdoor football practice facility with ancillary and support structures, parking facilities, office, retail, restaurant and entertainment uses and related infrastructure improvements on approximately 91 acres of land described in Exhibit A attached hereto and made a part hereof (the "Land") for the benefit of the public to be further documented as described herein.

C. The City contemplates that the indoor stadium, outdoor practice facility and related parking facilities will be publicly-owned and will provide a multi-purpose venue to attract the public for athletic and entertainment events.

D. The City and Blue Star now desire to set forth the definitive terms and conditions governing the development of the Land.

E. The City is coordinating with and will be obtaining approval of the terms and conditions of this Agreement from the Frisco Economic Development Corporation (the "FEDC"), the Frisco Community Development Corporation (the "FCDC"), and the Frisco Independent School District (the "FISD"). The City, FEDC, FCDC, and FISD are collectively referred to as the "Public Entities".

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and for other good, valuable and binding consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I.
DEVELOPMENT OF STADIUM FACILITIES

1.1 Development of Stadium Facilities. The City shall design, construct and develop the facilities set forth in subparagraphs (a) – (d) below (the "Stadium Facilities"),

each designed for a minimum useful life of forty (40) years on the Stadium Tract as hereinafter defined. The Stadium Facilities shall include:

(a) Stadium. An indoor football stadium similar to and constructed to a standard commensurate with other National Football League ("NFL") practice facilities and with a design and exterior/interior finish quality standards associated with other Class A multi-use event centers in the Dallas/Fort Worth area (the "Stadium"). The Stadium shall contain seating for at least 12,000 people in a football configuration. If feasible, the Stadium will include at a minimum two (2) pairs of matching minimum 50 person locker rooms (4 total with each pair capable of being combined into single minimum 100 person locker rooms), one (1) additional minimum 90-person locker room of NFL quality, a master scoreboard with full video replay capabilities, a professional quality sound system, an NFL approved playing field appropriate for football covered by synthetic turf, a press box, broadcast booths for radio and television and accommodations for at least two (2) coaching booths, one (1) ring of suites seating and/or a club seating area with armchair seats, an NFL quality training room facility, offices to house a maintenance and operations headquarters staff for the Stadium Facilities, ticketing offices and booths, concession areas, and NFL quality coaching staff offices. The Stadium will be able to efficiently handle large- scale community non-sporting events. The Stadium shall have the logos of the City and FISD permanently displayed and shall display the logos of the City and FISD on the playing surface during periods of City Use and FISD Use and at other times not in conflict with the activities being conducted in the Stadium.

(b) Outdoor Practice Fields and Ancillary Structures. One outdoor natural grass football field and one outdoor artificial turf football field and ancillary structures (collectively, the "Outdoor Practice Facilities");

(c) Parking Facilities. One or more structural parking garages to support the Stadium Facilities and Headquarters Facility as hereinafter defined with a minimum capacity of 3,000 cars located on the Stadium Tract (the "Parking Facilities"), with additional specifications relating to materials, access and other standards as approved by the City, which shall not be unreasonably withheld, conditioned or delayed and which shall be completed not later than the time of the completion of construction of the Stadium; and

(d) Onsite Infrastructure. Onsite infrastructure improvements ("Onsite Infrastructure Improvements") including but not limited to roads, water lines, sewer lines, storm drainage improvements, water wells for irrigation and decorative water features, landscaping, open spaces, lighting, walkways, fountains, plazas, street and open space furniture and other improvements to the Stadium Tract.

1.2 Development of Offsite Infrastructure. The City shall construct and develop in a good and workmanlike manner, through the use of competitive bidding when legally required, off-site infrastructure improvements, sufficient to allow for the improvement and/or development and operation of the Stadium Facilities, including, but not limited to, roads, storm water detention facilities, drainage facilities, sidewalks, and public areas, adjacent and nearby to the Stadium Tract as may be necessary or reasonably requested by Blue Star and

approved by the City contemporaneously and in connection with the construction of the Facilities and other improvements to the Stadium Tract shown on Exhibit B attached hereto and made a part hereof (the "Offsite Infrastructure"). The City will develop and construct the Offsite Infrastructure and will use its best reasonable efforts to coordinate the construction to not interfere with the construction of the Stadium Facilities and complete the construction of such Offsite Infrastructure by the date of the issuance of the certificate of occupancy for the Stadium.

1.3 Timing and Process for the Development of the Stadium Facilities on the Stadium Tract. The City and Blue Star agree to use commercially reasonable efforts to achieve the timing and utilization of the development process set forth below.

(a) Design Professionals. On or before August 30, 2013, the City shall solicit requests for qualifications for professional services for the planning, design, engineering and construction review of the Stadium Facilities. On or before October 15, 2013, the City will engage the design professionals including an architectural firm experienced in the design of sports and entertainment facilities of the nature contemplated herein (the "Architect") who shall have the primary responsibility for the design of the Stadium Facilities. The City shall contractually obligate the Architect and all other design professionals to indemnify the City and Blue Star as joint indemnitees consistent with the provisions of Chapter 130, Texas Civil Practices and Remedies Code and Chapter 151 of the Texas Insurance Code, and to maintain insurance (including errors and omissions coverage) for the benefit of the City and Blue Star as additional insureds to the extent that such additional insured status is commercially available without additional premium cost, in each case in form and substance not less than is customary for a City-operated design project with a scope similar to that of the Stadium Facilities. The City shall require in its contracts with the Architect or structural engineer (if the City contracts directly with such structural engineer) that the structural elements of the Stadium Facilities be engineered in accordance with generally accepted engineering practices and engineered at a standard for an estimated useful life of the structural elements of not less than 40 years. The City and the Architect shall enter into a contract substantially in the form set forth in Exhibit D attached hereto. Blue Star shall have the reasonable right of approval of any material changes that the City and the Architect make to the form of the architectural contract attached hereto. Blue Star shall have the reasonable right of approval of the form of any contract directly between the City and the structural engineer.

(b) Award of Contract to Construction Manager at Risk. On or before January 21, 2014, the City utilizing the process set forth in Section 1.4 below will award the contract to construct the Stadium Facilities to the construction manager at risk.

(c) Site Plan for Stadium Tract. On or before December 9, 2013, the Architect shall prepare a site plan showing the definitive location of approximately 20 acres of the Land upon which the Stadium Facilities will be located (the "Stadium Tract") and shall have prepared and delivered to the

City and Blue Star for their joint approval a survey including the metes and bounds description of the Stadium Tract.

(d) Approval of Site Plan and Conveyance Plat. On or before January 15, 2014, the FCDC shall file with, and obtain approval from, the City of the Site Plan and a conveyance plat of the Stadium Tract.

(e) Conveyance of Stadium Tract. Following the approval of the Site Plan and the approval and recording of the conveyance plat by the City, the FCDC shall convey to the City lien free good and indefeasible title to the Stadium Tract.

(f) Tax Increment Reinvestment Zone #1 ("TIRZ#1"). On or before January 21, 2014, City shall take those lawful steps necessary to amend the boundaries of TIRZ#1 to include the Stadium Tract. City shall cause the project plan of TIRZ#1 to be amended to include the Stadium Facilities. City shall cause the TIRZ#1 existing financing plan to be amended to include up to $90,000,000 in TIRZ#1 funds to pay for the Stadium Facilities through the reimbursement to the City of $90,000,000 in City debt issued for the construction of the Stadium Facilities.

(g) Final Plans. On or before July 14, 2014, the Architect shall provide the final plans and specifications of the Stadium Facilities for joint approval of the City and Blue Star necessary for obtaining City and any other governmental permits and approvals for the construction of the Stadium Facilities.

(h) Guaranteed Maximum Price. On or before September 4, 2014, the Construction Manager at Risk shall have issued a guaranteed maximum price to construct the Stadium Facilities (the "Stadium Facilities GMP"), which Stadium Facilities GMP shall be approved by the City and Blue Star.

(i) Expedited Permitting. The City will expedite the permitting for the Stadium Facilities.

(j) Commencement of Construction. Within fourteen (14) days after the approval of the Stadium Facilities GMP by the City and Blue Star, the Construction Manager at Risk will obtain the necessary construction permits and cause the commencement of construction of the Stadium Facilities.

(k) Completion of Stadium Facilities. On or before July 31, 2016, the Construction Manager at Risk shall complete the Stadium Facilities and obtain a certificate of occupancy and any other governmental approvals necessary for the Stadium Facilities to open to the public and as contemplated by the Facilities Lease.

1.4 Construction Manager at Risk Contract. To the extent allowed by law, the City shall use the construction manager at risk method pursuant to Subchapter F of Chapter 2267 of the Texas Government Code (located at Chapter 2269 of the Texas Government Code after September 1, 2013) for the construction of the Stadium Facilities based upon criteria and on such terms and conditions as the City, in its reasonable discretion, determines will offer the best value for the City and consistent with the requirements of the Facilities

Lease. The Parties hereby acknowledge that the City, in compliance with all applicable laws, will award the contract to the construction manager at risk (the "CM at Risk"). To the extent allowed by law, Blue Star shall have the reasonable right to participate in the selection of the CM at Risk. The City and the CM at Risk shall enter into a contract substantially in the form set forth in Exhibit C attached hereto which shall include an amendment for a guaranteed maximum price (the "CMR Contract"). Blue Star shall have the reasonable right of approval of any material changes that the City and the CM at Risk make to the form of CMR Contract attached hereto.

1.5 Contractors. To the extent the City is required by law to procure the construction of all or any part of the Offsite Infrastructure through one or more separate contracts (other than pursuant to the CMR Contract), the City shall solicit and award such contracts pursuant to Subchapters C or D of Chapter 2267 of the Texas Government Code (located at Chapter 2269 of the Texas Government Code after September 1, 2013) for a specified (stipulated) sum and shall enter into such contract with said contractors (the "Separate Construction Contracts").

1.6 Consultant. City agrees to engage Blue Star as a consultant to the City in connection with all aspects of the design, development and construction of the Stadium Facilities.

(a) Rights and Responsibilities. As consultant to the City, Blue Star shall:

(i) Review all agreements of purchase or sale, all information, due diligence materials, title commitments and environmental reports, including, but not limited to, soil reports, Phase I reports and Phase II reports, obtained by the City in connection with the acquisition of the Stadium Tract.

(ii) Review and recommend action by the City, if necessary, regarding the CMR Contract and any Separate Construction Contracts, all architectural, engineering, design contracts, testing contracts, surveys, subcontracts and all other contracts and documents of whatever nature relating to the Stadium Facilities or any part thereof (copies of the form of the architectural contract and the CMR Contract are attached hereto as Exhibits C and D);

(iii) Supervise the scheduling, budgeting and funding process for the design, construction and development of the Stadium Facilities, including, but not limited to, the ability to schedule meetings to accomplish the design, development and construction of the Stadium Facilities;

(iv) Interact with the architects, engineers, CM at Risk contractors, subcontractors and any and all other persons engaged or employed in the design, construction and development of the Stadium Facilities; and

(v) Advise the City to obtain any information deemed necessary or appropriate by Blue Star in connection with the design, development and constructions of the Stadium Facilities,

1.7 Stadium Facilities Financing.

(a) Scope of Stadium Facilities Financing. Based upon the scope of the Stadium Facilities, it is anticipated by the Parties that the total cost of the Stadium Facilities (the "Stadium Facilities Costs"), will equal approximately $90,000,000 in costs actually incurred in the design and construction of the Stadium Facilities. City shall waive one-half of all permit fees, inspection tap fees, impact fees and other City generated fees related to the Facilities. City shall fund $90,000,000 of the Stadium Facilities Costs (excluding issuance costs) through proceeds from the issuance of debt by the City (the "Stadium Facilities Debt"); provided, however, such payment obligations shall be subject (i) to the successful authorization, sale and delivery of such Stadium Facilities Debt by the City to the underwriters or purchasers thereof, (ii) the approval of the budget for the Stadium Facilities Costs by the City and Blue Star, and (iii) the annexation of the Stadium Tract into TIRZ#1. In the event the City is unable to authorize, sell and deliver the Stadium Facilities Debt or before City sells the Stadium Facilities Debt, either Party shall have the option, in its sole discretion, to terminate this Agreement and all other agreements described in this Agreement, and each Party shall bear the costs and expenses incurred by that Party as of that date and neither Party shall have any further obligations or liability under this Agreement.

(b) Facilities Hard and Soft Costs. Notwithstanding anything contained herein to the contrary, in no event shall the aggregate amount of Stadium Facilities Costs (excluding issuance costs) funded by the City exceed $90,000,000 and any amounts in excess of $90,000,000 shall be paid by Blue Star as provided in Section 1.8. Blue Star must approve any Stadium Facilities Costs that exceed $90,000,000, including but not limited to the approval of the Stadium Facilities GMP. Blue Star shall have the right to approve any change orders or construction change directives which would cause the Stadium Facilities GMP to increase; however, Blue Star shall not have the right to reject any increase in the Stadium Facilities GMP that would materially reduce the scope of the Stadium Facilities as provided in the Final Plans approved by City and Blue Star. It is the intention of the Parties hereto that the Stadium Facilities Costs shall include all hard and soft costs incurred in planning, engineering, constructing and developing the Stadium Facilities. Hard costs shall mean all costs for labor and materials for the Stadium Facilities arising under all construction contracts related to the Stadium Facilities (including the Construction Phase of the CMR Contract). Soft costs include CM at Risk Pre-Construction Phase fees and all architectural, engineering, surveying, accounting, financing, legal, testing and governmental fees or costs related to the planning, engineering, constructing and developing the Stadium Facilities.

(c) Stadium Facilities Budget. On or before August 19, 2014, the City with input from the Architect and the CM at Risk and with the approval of

Blue Star shall prepare a budget for the design and construction of the Stadium Facilities ("Stadium Facilities Budget"). The City shall deliver the Stadium Facilities Budget to Blue Star and shall provide updates to the Stadium Facilities Budget from time to time as necessary and forward the budget updates to Blue Star.

(d) City Account for Stadium Facilities Costs. On or before September 18, 2014, the City shall establish a separate account for placement of the Stadium Facilities funding ("Stadium Facilities Cost Account") and deposit the $90,000,000 (excluding costs of issuance) from the sale of the Stadium Facilities Debt. The Stadium Facilities Cost Account shall not be comingled with any other funds of the City. The funds in the Stadium Facilities Cost Account shall be dedicated solely to the payment of Stadium Facilities Costs. The Stadium Facilities Cost Account shall be administered and controlled (including signatory authority) by the City. Pending disbursement of funds in the Stadium Facilities Cost Account, the City shall invest such funds only in investments permitted and authorized by applicable law in the City's investment policy as in effect from time to time. All income earned on such investment shall belong to the City and shall not become part of the City Stadium Facilities Cost Account.

(e) Disbursements to Pay Stadium Facilities Costs. Funds shall be periodically disbursed from the Stadium Facilities Cost Account by the City to pay Stadium Facilities Costs ("Stadium Facilities Disbursement"). Subject to the receipt by City from Blue Star of an amount equal to any Stadium Facilities Cost Overruns, the City shall promptly make the Stadium Facilities Disbursement when presented a payment certificate by the CM at Risk duly approved by the Architect and Blue Star that reasonably identifies the Stadium Facilities Costs that are due and owing and authorized to be paid with invoices or other documentation which reasonably identifies the payee, the good, services and/or materials provided by such payee and the total amount due and owing with respect to such goods, services and/or materials.

1.8 Cost Overruns/Cost Savings. Any Stadium Facilities Costs (including issuance costs for the Stadium Facilities Debt) in excess of $90,000,000 set forth in Section 1.7 ("Stadium Facilities Cost Overruns") shall be paid by Blue Star. Upon each determination of a Stadium Facilities Cost Overrun, the Stadium Facilities Budget shall be revised and Blue Star shall have the obligation within twenty (20) days after such revision to contribute the amount of the Stadium Facilities Cost Overrun to the City to be held in the Stadium Facilities Cost Account and disbursed by the City for Stadium Facilities Costs. To the extent there are cost savings resulting in expenditures less than $90,000,000 for the Stadium Facilities ("Stadium Facilities Cost Savings"), Blue Star shall, upon obtaining the written consent of the City (which consent shall not be unreasonably withheld), allocate such Stadium Facilities Cost Savings to the enhancement of the Stadium Facilities. It is the intent of the Parties hereto that all costs expended in the construction of the Stadium Facilities will be for a public purpose as provided in this Agreement and, to the extent allowed by law, that all materials incorporated therein will be exempt from state and municipal sales tax.

1.9 Audit Rights. During the construction of the Stadium Facilities and for a period of two (2) years following the issuance of the certificate of occupancy for the Stadium

Facilities, the City shall have the right to review all records and books of account of the CM at Risk or Architect relating to any public funds expended for the Stadium Facilities under this Agreement upon reasonable notice and during regular business hours and to have the same audited at the City's expense. In the event such audit reveals discrepancies valued in total in excess of 0.5% of the Budget, the City shall be reimbursed by the CM at Risk and/or Architect for the cost of such audit.

ARTICLE II.
LEASE, MAINTENANCE AND USE OF THE STADIUM FACILITIES

2.1 Use of Stadium Facilities. The Stadium Facilities will be publicly owned and used as a multi-purpose venue to attract the public for athletic and entertainment events (the "Public Use").

2.2 Lease of Stadium Facilities. Contemporaneously with the execution of the CMR Contract, the City shall enter into a lease agreement substantially in the form set forth in Exhibit E attached hereto (the "Stadium Facilities Lease") with Blue Star, pursuant to which Blue Star will lease the Stadium Facilities from the City according to the terms of the Stadium Facilities Lease to promote the Public Use.

2.3 Maintenance of Stadium Facilities. During the term of the Stadium Facilities Lease, Blue Star shall be responsible for the payment of the respective costs associated with the maintenance and operation of the Stadium Facilities in accordance with the terms of the Stadium Facilities Lease.

2.4 Revenues from the Stadium Facilities. During the term of the Stadium Facilities Lease, Blue Star shall be entitled to and shall receive the revenues generated from or associated with the Stadium Facilities including, but not limited to, sponsorship revenues and revenues associated with facility naming rights (except City shall receive 3% of naming rights revenues for the Stadium Facilities and/or Stadium not to exceed $500,000 annually), all in accordance with the terms of the Stadium Facilities Lease.

2.5 Use of the Stadium Facilities. Blue Star will cause the Team to use the Stadium Facilities as the primary Team practice facility to include a portion of the Team's official pre-season football training camp (at a minimum one week per year), regular season practices and mini camps as allowed by NFL rules and regulations during the entire term of the Stadium Facilities Lease, and any renewals thereof. The City and FISD shall have the right to use the Stadium Facilities as set forth in the Stadium Facilities Lease.

2.6 Obligation to Promote the City. Blue Star shall coordinate its advertising and promotions for the Stadium Facilities to provide recognition for the City by separate agreement as is mutually agreeable between Blue Star and the City. Under no circumstances will the name given to the location of the Stadium Facilities (save and except the designation of the Team as the Dallas Cowboys) include any reference to a proper geographic name, unless such reference is to "Frisco" or the "City of Frisco", without the City's prior written consent. Blue Star shall recognize Frisco, Texas as the home of the Team's world corporate headquarters and training facility. Blue Star will provide advertising and promotion of the City during the term of the Stadium Facilities Lease as more fully described in such Stadium Facilities Lease.

ARTICLE III.
HEADQUARTERS TRACT

3.1 Headquarters. Blue Star HQ shall construct on approximately 5 acres within the Land (the "Headquarters Tract") a Class A (non-tilt wall) office building that will house the world corporate headquarters of the Team and Dallas Cowboy Cheerleaders and related facilities (the "Headquarters Facility"). The acquisition of the Headquarters Tract and the development, use and financing of the Headquarters Facility shall be subject to the provisions of the FEDC performance agreement ("FEDC Performance Agreement") attached as Exhibit F and made a part hereof and the FCDC Performance Agreement ("FCDC Performance Agreement") attached as Exhibit G and made a part hereof.

3.2 Design Professionals and Contractors. Blue Star HQ, in its sole discretion, shall engage an architect and other design professionals and contractors to design and construct the Headquarters Facility.

3.3 Site Plan for Headquarters Tract. On or before December 30, 2013, Blue Star HQ shall use commercially reasonable efforts to create a site plan for the Headquarters Facility and obtain approval of the site plan by the City (“Site Plan”), according to the City Ordinances. Upon approval of the Site Plan, the FCDC shall cause a conveyance plat of the Headquarters Tract to be prepared, approved by Blue Star HQ and the City, and be recorded in the Map and Plat Records of Collin County, Texas.

3.4 Conveyance of Headquarters Tract. On or before April 29, 2014, following the approval of the Site Plan and recordation of the conveyance plat for the Headquarters Tract, the FCDC shall use commercially reasonable efforts to convey to Blue Star HQ, or an affiliate thereof, lien free good and indefeasible title to the Headquarters Tract in accordance with the terms and provisions of the FCDC Performance Agreement.

3.5 Headquarters Budget. On or before August 4, 2014, Blue Star HQ shall use commercially reasonable efforts to prepare a budget for the design and construction of the Headquarters Facility ("Headquarters Facility Budget"). Blue Star HQ shall forward the Headquarters Facilities Budget to the City and the FEDC for their approval which shall not be unreasonably withheld and shall provide updates to the Headquarters Facilities Budget from time to time as necessary and forward the Headquarters Facilities Budget updates to the City and FEDC for their approval which shall not be unreasonably withheld.

3.6 Final Plans. On or before August 12, 2014, Blue Star HQ shall use commercially reasonable efforts to cause its architect and other design professionals to provide final plans and specifications for obtaining City and any other governmental permits for the construction of the Headquarters Facility, which plans and specifications shall be subject to the approval by the City and FEDC, which approval will not be unreasonably withheld.

3.7 Expedited Permitting. The City will expedite the permitting for the Headquarters Facility.

3.8 Commencement of Construction. On or before October 1, 2014, Blue Star HQ shall use commercially reasonable efforts to cause its agents to obtain the necessary construction permits and cause the commencement of construction of the Headquarters Facility.

3.9 Completion of Headquarters Facility. On or before January 1, 2017, Blue Star HQ shall use commercially reasonable efforts to cause the completion of the Headquarters Facility and will obtain a Certificate of Occupancy and any other governmental approvals necessary for the Team to occupy the Headquarters Facility.

3.10 Headquarters Facility Financing.

(a) Scope of Headquarters Facility Financing. Based upon the scope of the Headquarters Facility, it is anticipated by the Parties that the total cost of the Headquarters Facility (the "Headquarters Facility Costs") will equal or exceed $25,000,000 in costs actually incurred in the design and construction of the Headquarters Facility. The FEDC shall make an economic development grant to Blue Star HQ to reimburse up to $25,000,000 (less any costs of issuance of FEDC bonds) of the Headquarters Facility Costs through proceeds from the issuance of debt by the FEDC ; provided, however, such economic development grant expressly shall be subject to the provisions of the FEDC Performance Agreement.

(b) Headquarters Facility Hard and Soft Costs. Notwithstanding anything contained herein to the contrary, in no event shall the aggregate amount of Headquarters Facility Costs reimbursed by the FEDC exceed $25,000,000 (less the cost of issuance). Blue Star HQ may, in its sole discretion, cause the Headquarters Facility Costs to exceed $25,000,000. It is the intention of the Parties hereto that Headquarters Facility Costs shall include all hard and soft costs identified in the FEDC Performance Agreement.

(c) Disbursements to Reimburse Headquarters Facility Costs. Reimbursements for Headquarters Facility Costs shall be governed by the FEDC Performance Agreement.

(d) Timing of Debt Issuance. Any debt issued by the FEDC for the Headquarters Facility shall be sold simultaneously or after the City Debt for the Stadium Facilities Project.

3.11 Cost Overruns/Cost Savings. Any Headquarters Facility Costs in excess of $25,000,000 shall be payable by Blue Star HQ in accordance with the provisions of the FEDC Performance Agreement. To the extent there are cost savings resulting in expenditures less than $25,000,000 for the Headquarters Facility ("Headquarters Facility Cost Savings"), Blue Star HQ shall allocate such Headquarters Facility Cost Savings to the enhancement of the Headquarters Facility as reasonably approved by the FEDC.

3.12 Audit Rights. During the construction of the Headquarters Facility and for a period of two (2) years following the issuance of the certificate of occupancy for the Headquarters Facility, the FEDC shall have the right to review all records and books of account of Blue Star HQ, its design professionals or contractors relating to any public funds reimbursed for expenditures for the Headquarters Facility under this Agreement or the FEDC Performance Agreement upon reasonable notice and during regular business hours and to have the same audited at the FEDC's expense. In the event such audit reveals discrepancies valued in total in excess of 0.5% of the Budget, the FEDC shall be reimbursed by the CM at Risk and/or Architect for the cost of such audit.

ARTICLE IV.
MIXED USE TRACT

4.1 Mixed Use Tract. FCDC shall provide to Blue Star Frisco a survey including the metes and bounds descriptions of the Stadium Tract, Headquarters Tract, and the balance of the Land (such balance being the "Mixed Use Tract").

4.2 Grant of Purchase Option. Within 30 days of providing the survey of the location of the Mixed Use Tract, FCDC shall grant to Blue Star Frisco or an affiliate thereof, a purchase option to purchase the Mixed Use Tract in the form and on the terms set forth in that certain Purchase Option Agreement attached to the FCDC Performance Agreement.

4.3 Intentionally Omitted.

4.4 Mixed Use Tract Development. Blue Star Frisco will use reasonable commercial efforts to develop a Class A development and entertainment district on the Mixed Use Tract that may include a "Cowboys Plaza" area which will be open during normal business hours for public access and may include outdoor electronic display boards similar to those located at Victory Park in Dallas, Texas.

4.5 Tollway Office Buildings. Any office building located on a lot within the Mixed Use Tract which is adjacent to the Dallas North Tollway must be a Class A (non-tilt wall) office building with structured parking for its minimum required parking computed pursuant to the Frisco Zoning Ordinance.

4.6 Monument Feature. Blue Star Frisco shall erect a prominent monument feature with an electronic marquee located within the Mixed Use Tract designating the development with a Team related name and logo.

4.7 Coordination of Development. Blue Star Frisco, at Blue Star Frisco's option, will use reasonable commercial efforts to either (i) enter into a formal business relationship with the owner of the approximately 200 acre tract of land located north of the Land (the "Rudman Tract") to provide a unified development plan for the Rudman Tract and the Mixed Use Tract or (ii) if a formal business relationship is not utilized, Blue Star Frisco will at a minimum use reasonable commercial efforts to cooperate with the owner of the Rudman Tract and the City to establish a master development plan for the Rudman Tract and the Mixed Use Tract that include infrastructure (road, water, sanitary sewer and drainage) planning and compatible zoning development standards.

4.8 Zoning Amendments. Blue Star Frisco will provide the City with proposed additions and amendments to the planned development district regulations that govern the use and development of the Mixed Use Tract. The City shall process and act upon the proposed amendment to the planned development district regulation within a reasonable time.

4.9 Parking Assessment. The City and Blue Star Frisco will reasonably cooperate to create an assessment through a public improvement district or another mechanism to collect from the owners of commercial buildings within the Mixed Use Tract a fee equal to $2.00 per square foot of office space ("Parking Assessment") for the use of the TIRZ#5 Parking Facilities to be used to offset the debt service of the TIRZ#5 Parking Facilities.

4.10 Marquee Signage. Subject to North Texas Tollway Authority and National Transportation Safety Board standards and regulations, and subject to amendment to the planned development district zoning on the Mixed Use Tract, Blue Star Frisco may fund, construct, operate and maintain two electronic marquee signs to be located at locations mutually agreed to by the City and Blue Star Frisco, along the eastern border of the Mixed Use Tract. Such signs if installed shall provide four 8-second spots out of each 88-second loop of advertising space for events at the City's owned venues at no cost to the City.

4.11 North Dallas Tollway Right-of-Way Agreements. Upon acquisition of the Mixed Use Tract, Blue Star Frisco shall be entitled to all benefits of the Agreement between City of Frisco, Texas and Raymond A. Williams, Jr., Parcel 11-10, dated April 20, 1994, which grants thoroughfare impact fee credits for the dedication of right-of-way for the Dallas North Tollway.

ARTICLE V.
TAX INCREMENT REINVESTMENT ZONE NUMBER 5

5.1 Tax Increment Reinvestment Zone Number 5 ("TIRZ#5"). On or before July 15, 2014, the City will take such lawful steps as are necessary to create TIRZ#5. The boundary of TIRZ#5 will be the Headquarters Tract and the Mixed Use Tract. TIRZ#5 shall exist from the date of formation until December 31, 2039 ("TIRZ#5 Term"). The City shall dedicate to TIRZ#5 an increment equal to 50% of the City ad valorem taxes actually collected from property within the TIRZ#5 boundary and 50% of the City sales taxes actually collected from sales within the TIRZ#5 boundary (collectively, the "City Increment"). The City will use its reasonable efforts to obtain the participation of Collin County in TIRZ#5. The City shall prepare a preliminary financing plan which will provide the general description and estimated costs of the TIRZ#5 Parking Facilities as hereinafter defined (if any) , the estimate of ad valorem taxes to be generated by development within TIRZ#5 and the estimated increment to be generated by TIRZ#5 over the TIRZ#5 Term. On or before ninety (90) days after receipt and approval by the City and Blue Star of final plans and costs for the construction of the TIRZ #5 Parking Facilities, the City and the TIRZ #5 Board shall cause a final project plan and finance plan to be prepared and approved with a detailed description of the scope of the TIRZ #5 Parking Facilities, the estimated costs of the TIRZ #5 Parking Facilities and the timing of payment for the costs of the TIRZ #5 Parking Facilities ("Final Project and Finance Plan"). The TIRZ #5 Board and Blue Star shall negotiate and enter into an agreement for reimbursement to Blue Star for amounts equal to the Debt Service Deficiencies made by Blue Star to the City to be applied toward the TIRZ#5 Parking Debt and expenditures made by Blue Star for TIRZ #5 Parking Facilities Cost Overruns.

5.2 TIRZ#5 Parking Facilities. The TIRZ#5 Parking Facilities shall consist of two parking garages constructed by Blue Star and conveyed to the City that contain 1,413 structured parking spaces (the "City Parking Garages"), together with temporary surface parking facilities on property within the Mixed Use Tract containing a minimum of 1,340 parking spaces that will be replaced so as to achieve the following minimum structured parking:

(a) Two parking garages on Block B2 of the Mixed Use Tract providing 1,413 spaces ("TIRZ#5 Parking Facilities);

(b) Temporary surface parking on the Mixed Use Tract providing 1,340 parking spaces ("Temporary Parking") which shall be replaced with structured parking ("Replacement Parking");

(c) Blue Star shall provide additional shared structure parking on the Mixed Use Tract that is associated with non-residential uses only so that when combined with TIRZ#5 Parking (1,413 spaces), Replacement Parking (1,340 spaces), and the parking contained in the events center parking garage that is not otherwise assigned as exclusive use for Omni or other users (1,142) such parking spaces total five thousand five hundred thirty-three (5,533) structured parking spaces (the total of all structured spaces are referred to as "Required Parking" which has been identified by The Parking Supply and Demand Study dated July 28, 2016 prepared by Kimley Horn & Associates). All Required Parking will be available for use by the City Monday through Friday after 5:00 p.m. and Saturday through Sunday all day for public parking to include parking events held in the Stadium with such public use being additionally memorialized in a recordable joint parking agreement.

The City Parking Garages shall be owned by the City and leased to Blue Star under the terms of the Stadium Facilities Lease.

5.3 Financing of the TIRZ#5 Parking Facilities.

(a) Scope of Financing. The City will fund the cost of the TIRZ#5 Parking Facilities ("TIRZ#5 Parking Facilities Costs") in an amount equal to $20,000,000. City shall waive one-half of all permit fees, inspection tap fees and other City generated fees related to the Parking Facilities. The City shall fund the TIRZ#5 Parking Facilities Costs through proceeds from the issuance of City debt (the "TIRZ#5 Parking Debt"), the repayment of which shall be structured as interest only for an initial two (2) year period and thereafter regularly amortized principal and interest payments over a term (interest only on year three and each amortized payment thereafter being a "Debt Service Payment") which, together with the interest only period, would equal twenty-five (25) years.

(b) Timing of the TIRZ#5 Parking Debt Issuance. The TIRZ#5 Parking Debt shall be sold simultaneously or after the City Debt for the Stadium Facilities Agreement.

(c) TIRZ#5 Parking Facilities Hard and Soft Costs. It is the intention of the Parties hereto that TIRZ#5 Parking Facilities Costs shall include all hard and soft costs incurred in constructing and developing the TIRZ#5 Parking Facilities. Hard costs shall mean only all costs for all labor and materials for the TIRZ#5 Parking Facilities arising under all construction contracts related to the TIRZ#5 Parking Facilities. Soft costs shall include all architectural, engineering, surveying, accounting, financing, legal, testing and governmental fees or costs arising under the construction contracts related to the TIRZ#5 Parking Facilities.

(d) City Account for TIRZ#5 Parking Facilities Costs. Within six (6) months from the date of the approval by the City of the Final Project and

Finance Plan, the City shall establish a separate account for placement of the amount to pay the TIRZ#5 Parking Facilities Costs ("TIRZ#5 Parking Facilities Cost Account") and deposit the proceeds from the sale of the TIRZ#5 Parking Debt. The TIRZ#5 Parking Facilities Cost Account shall not be comingled with any other funds of the City. The funds in the TIRZ#5 Parking Facilities Cost Account shall be dedicated solely to the payment of TIRZ#5 Parking Facilities Costs. The TIRZ#5 Parking Facilities Cost Account shall be administered and controlled (including signatory authority) by the City. All income earned on investments of the TIRZ#5 Parking Facilities Cost Account shall belong to the City and shall not become part of the TIRZ#5 Parking Facilities Cost Account.

(e) Intentionally Omitted.

(f) Intentionally Omitted.

5.4 Intentionally Omitted.

5.5 Audit Rights. During the construction of the TIRZ#5 Parking Facilities and for a period of two (2) years following the issuance of the certificate of occupancy for the TIRZ#5 Parking Facilities, the City shall have the right to review all records and books of account of Blue Star, its design professionals or contractors relating to any public funds expended for the TIRZ#5 Parking Facilities under this Agreement upon reasonable notice and during regular business hours and to have the same audited at the City's expense.

5.6 Reimbursement to City of TIRZ#5 Parking Debt Payments. The City shall be reimbursed for the TIRZ#5 Parking Debt Payments in the following manner:

(a) The first two (2) years of interest-only payments of the TIRZ# 5 Debt up to the aggregate amount of $900,000 per year shall be the paid by the City, subject to reimbursement from TIRZ#5 revenues, and any shortfall shall be reimbursed by Blue Star to the City within ten (10) days of written notice from the City to Blue Star of the amount of such shortfall;

(b) For each Debt Service Payment commencing after the second anniversary of the TIRZ#5 Debt, TIRZ#5 shall pay to the City an amount equal to the lesser of (i) the amount of funds on deposit in accounts held in the name of TIRZ#5 (less a reserve for operation and administrative expenses) or (ii) the amount of the Debt Service Payment (the "TIRZ#5 Reimbursement Payment");

(c) To the extent that the TIRZ#5 Reimbursement Payment is not sufficient to cover the Debt Service Payment (each a "Debt Service Deficiency"), Blue Star shall remit to the City the amount of the Debt Service Deficiency within ten (10) days of written notice from the City to Blue Star of the amount of such Debt Service Deficiency.

5.7 TIRZ#5 Infrastructure Costs Reimbursements. During the TIRZ#5 Term, Blue Star and City may apply to the TIRZ#5 Board for reimbursements from TIRZ#5 funds, other than those used to reimburse the City for the interest and Debt Service Payments, of infrastructure costs, including, but not limited to, road, water, water wells for irrigation and

decorative water features, sanitary sewer, storm drainage improvements, landscaping, open spaces, lighting, walkways, fountains, plazas, street and open space furniture incurred by Blue Star within the TIRZ#5 boundary.

5.8 Termination of TIRZ#5 and Economic Development Grant. The TIRZ#5 Term and the Economic Development Grant shall terminate if the Headquarters Facility is not constructed and occupied or if there is an Event of Default by Blue Star under the Agreement or Stadium Facilities Lease.

ARTICLE VI.
MISCELLANEOUS

6.1 Occupancy Assurance Agreement. On or before the issuance of the City Debt, Blue Star shall cause the Occupancy Assurance Agreement set forth in Exhibit H attached hereto and made a part hereof (the "Assurance Agreement") to be executed and delivered to the City.

6.2 Defaults. A Party shall be in default if any of the following events ("Event of Default") shall occur:

(a) The failure of the part of the Party to pay an amount when due and owing under this Agreement and the continuation of such failure for ten (10) days after notice has been provided in accordance with this Agreement; and

(b) Any other breach of any covenant or provision of this Agreement and such breach has not been cured within thirty (30) days from and after the date of written notice of such breach is given; provided, however, such Event of Default shall not exist if the defaulting Party shall have commenced to remove or cure such breach and shall be proceeding with reasonable diligence to completely remove or cure such breach.

6.3 Remedies. Upon the occurrence and during the continuance of an Event of Default, the non-defaulting Party shall have all remedies available to it at law or in equity, including without limitation termination, injunction and specific performance. In the event that the Facilities no longer house the office of the world headquarters of the Team or the primary Team practice facility as described herein, City shall be entitled to exercise its rights under the Lease.

6.4 Information about the Land. On or before August 26, 2013, the FCDC agrees to provide any information whatsoever that it has in its possession or control concerning the condition or ownership of the Land including, but not limited to, plans, reports and studies, environmental tests and reports and soil tests. FCDC shall allow the Parties the right of reasonable entry onto the Land during normal business hours for purposes of conducting inspections, tests, and examinations deemed necessary by either Party.

6.5 Designation of Representative for Public Entities. The City shall consult with and obtain approvals from the Public Entities to the extent that they are required by this Agreement. The City Manager of the City shall designate the City representative ("City Representative"). The City Representative shall be the Party that Blue Star HQ and Blue Star Frisco shall contact and work with concerning the Agreement and shall be responsible for the implementation of the City's duties pursuant to the terms of this Agreement.

6.6 Further Agreements. The Parties hereto agree to use their good faith efforts to complete and execute, as soon as practicable following the date hereof, all agreements or other documents necessary, appropriate or desirable to carry out the transactions contemplated hereby specifically including the agreements described on the attached Exhibits.

6.7 Notices. Any notices or other communications required or desired to be given to the other Parties hereto shall be given in writing and delivered by a reputable independent courier service providing proof of delivery, a reputable overnight courier, or if mailed certified first class mail to the following addresses:

To: City of Frisco
6101 Frisco Square Blvd.
Frisco, Texas 75034
Attention: City Manager

With copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Attention: Richard Abernathy and Robert Roeder

To: Blue Star Stadium, Inc.
Blue Star HQ, Inc. and/or
Blue Star Frisco, L.P.
One Cowboys Way
Frisco, Texas 75034
Attention: Stephen Jones

With a copy to:

Blue Star Stadium, Inc.
Blue Star HQ, Inc. and/or
Blue Star Frisco, L.P.
8000 Warren Parkway #100
Frisco Texas 75034
Attention: Joe Hickman

and Blue Star Stadium, Inc.
Blue Star HQ, Inc. and/or
Blue Star Frisco, L.P.
One Cowboys Way
Frisco, Texas 75034
Attention: General Counsel

And to:

Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attention: Denis Braham and Barry Knight

6.8 Governing Law: Venue. This Agreement shall be interpreted and the rights of the Parties hereto determined in accordance with the laws of the State of Texas without regard to the conflicts of laws principles thereto, and venue shall be in State District Court in Collin County, Texas,

6.9 Compliance with Laws. The Parties hereto shall comply in all material respects with all applicable laws in connection with the development and construction of the Facilities and Offsite Infrastructure.

6.10 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors. This Agreement may not be assigned (except to in whole or in part the affiliates of Blue Star HQ or Blue Star Frisco, respectively) without the prior written consent of the other Parties hereto.

6.11 Entire Agreement. This Agreement (including the Exhibits hereto) and the other agreements and documents referenced herein constitute the full and entire understanding and agreement of the Parties hereto with regard to the subject matter hereof and thereof and supersede any prior or contemporaneous agreement or understanding among the Parties.

6.12 Amendment. This Agreement may not be amended or terminated without the written consent of the Parties hereto.

6.13 Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

6.14 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, such provision shall be reformed to the extent necessary to permit enforcement thereof, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

6.15 Third-Party Beneficiaries. The Parties hereto intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual other than the Parties hereto and their permitted assigns.

6.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

6.17 Headings. The headings of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

6.18 Draftsmanship. This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

6.19 Force Majeure. The time frames contained in this Agreement shall be extended for any delays caused by Force Majeure. For the purposes of this Agreement, the term "Force Majeure" shall mean any unforeseeable causes beyond the control of the Party hereto seeking the extension, including, but not limited to, casualty, damage, strikes or lockouts, acts of God, war, terrorism, riots, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any governmental or regulatory body other than the City, enemy action, civil disturbance, fire or unavoidable casualties.

6.20 Dallas Cowboys Commitment. Blue Star hereby represents and warrants that it has the authority to commit the Team to the obligations to occupy the Stadium and Headquarters in accordance with this Agreement.

6.21 Delays or Omissions. Except as otherwise provided herein to the contrary, no delay or omission to exercise any rights, power or remedy inuring to any Party upon any breach or default of any Party under this Agreement shall impair any such right, power or remedy of such Party not shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any breach of default theretofore or thereafter occurring. All remedies either under this Agreement or by law or otherwise afforded to the Parties shall be cumulative and not alternative.

6.22 No Joint Venture. Nothing contained in this Agreement or any other agreement between Blue Star, Blue Star HQ or Blue Star Frisco and the City is intended by the parties to create a partnership or joint venture between Blue Star, Blue Star HQ or Blue Star Frisco, on the one hand, and the City on the other hand and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

6.23 Confidentiality. Blue Star, Blue Star HQ and Blue Star Frisco or their affiliates have advised the City that the information to be included in the documents referenced herein may contain confidential commercial information relating to Blue Star, Blue Star HQ and Blue Star Frisco and their businesses and affairs that are protected from public disclosure under applicable law, and that premature disclosure thereof will have a material adverse business and financial impact on Blue Star, Blue Star HQ and Blue Star Frisco. Accordingly, the City agrees that it will follow all procedures established by applicable law that give Blue Star, Blue Star HQ and Blue Star Frisco the right to contest the public disclosure of confidential commercial and business information relating to Blue Star and its affiliated business entities.

6.24 Personal Data. In the course of verifying compliance by Blue Star, Blue Star HQ and Blue Star Frisco with the requirements of this Agreement, the City and the City's

employees, agents, consultants and contractors assigned to perform any portion of the review and inspection may obtain certain information relating to identified or identifiable individuals "Personal Data". The City acknowledges that it shall have no right, title or interest in any Personal Data obtained by it as a result of this Agreement, and will not use Personal Data for any purpose other than verification of compliance by Blue Star, Blue Star HQ and Blue Star Frisco with the requirements of this Agreement. The City shall take all appropriate legal, organizational, and technical measures to ensure the confidentiality of Personal Data, and protect Personal Data against unauthorized disclosure or access, and against all other unlawful forms of processing, keeping in mind the nature of such data.

6.25 Approvals. This Agreement, including all exhibits attached hereto, is expressly contingent upon the approval hereof by the Frisco Economic Development Corporation, the Frisco Community Development Corporation, and the Frisco Independent School District, which approval is evidenced by each such entities' signature hereto.

Remainder of page left intentionally blank

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the date first written above.

BLUE STAR STADIUM, INC.,
a Texas corporation

By:_____
Name:_____
Title:_____

BLUE STAR HQ, INC.,
a Texas corporation

By:_____
Name:_____
Title:_____

BLUE STAR FRISCO, L.P.,
a Texas limited partnership

By: Blue Star Investments, Inc.,
a Texas corporation,
its general partner

By:_____
Name:_____
Title:_____

CITY OF FRISCO, TEXAS,
a Texas home rule municipality

By: _____
George Purefoy, City Manager

Attest:

_____
City Secretary

Acknowledged and Agreed to this ____ day of _____, 2016.

Frisco Economic Development Corporation,
a Texas non-profit corporation

By:_____
James L. Gandy, President

Acknowledged and Agreed to this ____ day of _____, 2016, to be effective on the _____ day of _____, 2016, expressly contingent upon no election being required pursuant to Section 5.160 of the Texas Local Government Code.

Frisco Community Development Corporation,
a Texas non-profit corporation

By:_____
George Purefoy, City Manager

Acknowledged and Agreed to this ____ day of _____, 2016.

Frisco Independent School District

By:_____
Dr. Jeremy Lyon, Superintendent

EXHIBIT A

(Land)

Being a tract of land located in the Collin County School Land Survey #6, Abstract No. 149, being all of a tract of land described in deed to Frisco Warren Parkway 91, Inc., Volume 5012, Page 3715, Deed Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a 5/8" iron rod found with cap stamped "KHA", being the Southeast corner of Lot 1, Block A, North Tollway Center, recorded by Plat in Cabinet 2007, Page 95, per the Plat Records, Collin County, Texas (P.R.C.C.T.), and being in the West right-of-way line of Dallas North Tollway (variable width public R.O.W.);

Thence along the West right-of-way line of said Dallas North Tollway, and the East line of said Frisco tract as follows:

S 00 degrees 11 minutes 20 seconds E, 1008.38 feet to a 1/2" iron rod set with cap stamped "Wier & Assoc Inc", being the beginning of a curve to the left;

Along with said curve to the left having a radius of 3014.79 feet, a delta angle of 14 degrees 41 minutes 17 seconds, a chord bearing of S 07 degrees 31 minutes 59 seconds E, 770.74 feet, and an arc length of 772.86 feet to a 1/2" iron rod set with cap stamped "Wier & Assoc Inc", being the Southeast corner of said Frisco tract and being in the North right-of-way line of Warren Parkway (variable width public R.O.W.);

Thence along the North right-of-way line of said Warren Parkway and the South line of said Frisco tract as follows:

S 89 degrees 56 minutes 34 seconds W, 1506.57 feet to a 1/2" iron rod set with cap stamped "Wier & Assoc Inc";

S 89 degrees 37 minutes 22 seconds W, 800.23 feet to a 1/2" iron rod set with cap stamped "Wier & Assoc Inc", being the Southwest corner of said Frisco tract;

Thence N 00 degrees 16 minutes 47 seconds W, along the West line of said Frisco tract, 1820.94 feet to a 1/2" iron rod found;

Thence S 88 degrees 55 minutes 13 seconds E, along the North line of said Frisco tract, passing a 5/8" iron rod found with cap stamped "KHA" at 1162.91 feet being in the West right-of-way line of Gaylord Parkway per plat recorded in Cabinet 2007, Page 95, P.R.C.C.T., passing a 5/8" iron rod found at 1287.09 feet being in the East right-of-way line of said Gaylord Parkway and being the Southwest corner of said Lot 1, Block A, and continuing in all a total distance of 2211.70 feet to the place of beginning and containing 91.645 acres (3,992,065 square feet) of land.

EXHIBIT B

Offsite Infrastructure

1) Widening of Warren Parkway to six lanes between the Dallas North Tollway and Legacy as and when deemed necessary by traffic engineering studies conducted by the City.
2) Adding two lanes to the southbound access road to the Dallas North Tollway between John Hickman and Warren
3) Offsite sewer and storm drainage necessary to service to the Land
4) Construction of Gaylord Parkway from Warren Parkway to the northern boundary of the Land.
5) Water line with sufficient capacity to service the Land.

EXHIBIT C

CMR Contract Form

DRAFT

AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor *where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

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

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

CITY OF FRISCO, TEXAS

(see address for notice purposes in **Exhibit B**)

and the Construction Manager:
(Name, legal status and address)

«[To be determined.] »« »

(see address for notice purposes in **Exhibit B**)
« »

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

«**STADIUM TRACT FACILITIES** »

The Architect:
(Name, legal status and address)

»« »_____

(see address for notice purposes in **Exhibit B**)
»

The Owner's Designated Representative:
(Name, address and other information)

«See **Exhibit B**. »

The Construction Manager's Designated Representative(s):
(Name, address and other information)

« See **Exhibit B**. »
« »
« »
The Architect's Designated Representative:
(Name, address and other information)

« See **Exhibit B**. »

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.

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes: (1631938859)

« »
« »
« »
« »
« »

The Owner and Construction Manager agree as follows.

DRAFT

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

§ 1.1.1 The Contract Documents consist of this Agreement, the AIA A201-2007 General Conditions of the Contract for Construction as modified by the Owner and the Construction Manager (referred to herein as the "General Conditions"), Supplementary and other Conditions (if any) identified in this Agreement, 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, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein.

Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal (the "GMP Proposal"), the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. All sections of the Project Manual shall be a part of the Contract Documents, including the bid proposal form signed by the Construction Manager, and the Request for Proposals.

The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Where reference is made in this Agreement or the Contract Documents to the AIA Document A201–2007, General Conditions of the Contract for Construction ("A201-2007" or the "General Conditions"), the reference refers the version of the AIA Document 201-2007 as modified by the Owner and the Construction Manager (identified as the "Contractor" therein).

§ 1.1.2 If, and to the extent of, any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) written Modifications issued after execution of this Agreement, including the GMP Amendment, with the Modification bearing the latest date taking precedence; (2) this Agreement, including the exhibits attached hereto and incorporated fully herein, but not including the General Conditions; (3) Addenda issued prior to the execution of this Agreement, with the Addenda bearing the latest date taking precedence; (4) the General Conditions; (5) the Final Drawings and Specifications; and (6) the Preliminary Drawings and Specifications, with those bearing the latest date taking precedence. Without limiting the foregoing, the terms of the Agreement and the General Conditions shall control over any terms in the Drawings or Specifications inconsistent therewith.

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§ 1.1.3 A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, (4) or a Minor Change Directive issued by the Owner in accordance with Section 7.4 of the General Conditions. Unless specifically enumerated in this Article 1 above, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Construction Manager's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and Blue Star and their project representatives and the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services 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 or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, the General Conditions shall apply only as specifically provided in this Agreement. For the Construction Phase, the General Conditions of the Contract shall be as set forth in A201–2007, as modified by the parties hereto (the General Conditions as identified in Section 1.1 above). The term "Contractor" as used in the General Conditions shall mean the Construction Manager.

§ 1.4 Owner's Construction Consultant (Blue Star)

§ 1.4.1 Owner has retained the services of Blue Star Stadium, Inc. ("Blue Star") as a consultant in connection with the design and construction of the Project. Blue Star also has certain rights arising under this Contract as further described in Article 2 of the General Conditions.

§ 1.4.2 Construction Manager shall deliver to Blue Star accurate, complete copies of all notices or written communications given by the Construction Manager to the Owner, including but not limited to all such notices or communications required to be given by the Contract Documents, prior to or simultaneously with the delivery to the Owner. Notice provisions in the Contract Documents that are silent with regard to notice to Blue Star shall not be construed to mean that notice is not required to be given to Blue Star, even though specific provisions expressly require notice to Blue Star. No notice required to be provided to the Owner under the Contract Documents shall be effective until and unless also delivered to Blue Star. All meetings, conferences, and consultations between Owner and Construction Manager shall include Blue Star.

§ 1.4 DEFINITIONS

§ 1.4.1 The following terms as used in the Contract Documents shall have the meanings set forth below:

.1 "Agreement" – this AIA® Document A133 – 2009, Standard Form of Agreement between Owner and Construction Manager (where the Construction Manager is also the Constructor), as modified by the parties and executed below, together with the Exhibits listed in Section 11.5.1 and attached hereto.

.2 "Applicable Law" or "Applicable Laws" -- all laws, statutes, ordinances, regulations, guidelines or requirements now in force or hereafter enacted by any applicable Governmental Authority relating to or affecting the Project or arising from the Construction Contract, including, if and as applicable (1) the United States Occupational Safety and Health Administration requirements, (2) the Americans with Disabilities Act requirements, (3) requirements under Title VII of the Civil Rights Act of 1964, as amended, (4) the Age Discrimination in Employment Act requirements, (5) applicable building codes and zoning requirements of the City, (6) storm water, street, utility and other related infrastructure requirements, and (7) requirements related to the use, removal, storage, transportation, disposal and remediation of Hazardous Materials.

.3 "Architect " – means the licensed design professional (whether such professional is a licensed architect or engineer) identified above as the "Architect", any replacement retained by the Owner (in the event of the termination of the design professional identified above), and such other person or

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entity designated in writing by the Owner to assume the responsibilities of the Architect under the Contract Documents in accordance with Section 4.1.3 of the General Conditions. Owner shall also reserve the right to retain one or more separate engineering consultants with regard to the design of the Project ("Owner's Engineering Consultants").

.4 "Contract Documents" -- those documents as described in Section 1.1, including the Exhibits listed in Section 11.5 of this Agreement.

.5 "Contract" – the contractual agreement between the Owner and the Construction Manager for the construction of improvements and such other required services for the Project, created by this Agreement, including the Exhibits attached hereto and incorporated herein, the General Conditions, and the other Contract Documents.

.6 "Construction Manager's Reimbursable Conditions Costs" – those administrative and supervisory personnel costs, direct project overhead, and other onsite costs and expenses incurred by Construction Manager in the performance of its administrative, supervisory, and management responsibilities under the Contract and reimbursable as Cost of the Work pursuant to Article 6. Such costs shall include, to the extent reimbursable as Cost of the Work pursuant to Article 6, the costs to furnish insurance, bonding, and utilities and to perform incidental work, including minor field labor performed by Construction Manager's employees, and the purchase of materials in connection therewith.

.7 "Governmental Authority" or "Governmental Authorities" -- any federal, state and/or local agency, department, commission, board, bureau, administrative or regulatory body or other instrumentality having jurisdiction over the Project, including any public sector board, agency, or body which has been authorized by a Governmental Authority to exercise some portion of its jurisdiction over the Project.

.8 "Project Site" -- that portion of the real property on which the Work is to be performed by Construction Manager or under which Construction Manager has control and Construction Manager's operations under the Contract are being performed, as more particularly described or identified in **Exhibit A** attached hereto.

.9 "Self Perform Work" -- Work, other than supervision of the Work and minor Work in connection with Construction Manager's administrative and supervisory activities during the Construction Phase, that Construction Manager intends to perform by the Construction Manager's own forces, if authorized by Owner and the requirements hereof.

.10 "Separate Contractor" – when referring to a Separate Contractor of the Owner, shall be a contractor or supplier with whom Owner has contracted directly, other than the Construction Manager, to furnish materials or perform work at the Project Site.

.11 "Indemnified Parties" – those persons or entities identified or described in Section 3.18.1 of the General Conditions as "Indemnified Parties".

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

The Preconstruction Phase shall commence upon the date specified in a Notice to Proceed for Pre-Construction Phase Services issued by the Owner and shall continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager is not entitled to reimbursement for any costs incurred for Pre Construction Phase Services performed before issuance of the first Notice to Proceed. Pre-Construction Phase Services may overlap with Construction Phase Services.

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§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect, Blue Star, Owner's Engineering Consultants (as applicable), and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall consult with the Owner, Blue Star, Owner's Engineering Consultants (as applicable), and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner, Blue Star, and Architect on constructability; availability of materials and labor; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically (as reasonably requested by Owner, but no less than monthly) update a **Project Schedule** for review by Architect and Blue Star and the Owner's approval. The Construction Manager shall obtain the Architect's approval for the portion of the Project Schedule relating to the performance of the Architect's services, including the issuance of design packages. The Project Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project Schedule shall include proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP Proposal (as defined below) for the Work, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed Critical Milestones (if any) and required date(s) of Substantial Completion. If preliminary Project Schedule updates indicate that previously approved Schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 Phased Construction

§ 2.1.4.1 The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project . The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.4.2 The Work may be divided into one or more phases or packages which will be ready for commencement of construction before it is appropriate to arrive at an overall Guaranteed Maximum Price for the entire Work. If the Owner elects to proceed before the parties arrive at an overall Guaranteed Maximum Price, the Construction Manager shall develop GMP Proposals for any such phases or packages of the Work identified by the Owner. No Work, however, will be authorized to commence hereunder until the parties have entered into a written "Work Authorization Amendment" to this Agreement (see Section 2.2.10 below) which describes the Work to be performed thereunder, establishes a Guaranteed Maximum Price (a "Not to Exceed Price") for such Work, and establishes such Interim or Substantial Completion Dates for such Work as the parties may agree. Execution by Owner and delivery to Construction Manager of such a Work Authorization Amendment shall constitute Notice to Proceed for the Work specified therein but shall not constitute the commencement of the Work for purposes of computing the Contract Time requirements under Section 2.3.3 below, except as otherwise expressly provided in the respective Work Authorization Amendment. Construction Manager shall be allowed ___% of the Cost of the Work for its Fee for any such Work Authorization Amendment until such time as a Guaranteed Maximum Price for the entire Work is agreed upon by the parties in which case Section 5.1.1 shall control with respect to the total fee to be paid. When a Guaranteed Maximum Price for the entire Work is agreed upon by the parties, the fee shall be adjusted, if appropriate, as provided in Section 5.1.1 below and an appropriate credit shall be given by Construction Manager to any fees paid pursuant to any Work Authorization Amendments.

§ 2.1.5 Preliminary Cost Estimates

Completion deadlines with regard to the Project cannot reasonably be extended. When the design drawings are complete and all of the design packages have been bid by trade contractors, it will be too late in the process to

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substantially redesign the Project to meet the project budget. For that reason, it is the desire of the Owner to recognize any likely budget overruns as soon as possible, and by this Contract it is employing the Construction Manager to do the design monitoring, estimating, value engineering ("value analysis") and other functions to help the Owner meet the project budget. At any time that Construction Manager develops reasonable concerns based on their skill and experience about the integrity of the project budget or viability of the schedule, Construction Manager is to promptly advise the Owner, Blue Star, and Architect of the concerns, and make recommendations in the best interests of the Owner's Project goals.

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect and Owner's Engineering Consultants, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for Blue Star's review and Owner's approval. If the Architect, Owner's Engineering Consultants, Blue Star, the Owner, or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 Throughout the Preconstruction Phase, the Construction Manager will review and monitor the various phases of the development of the design documents to determine whether or not the project budget remains realistic at each phase of the development of the design documents by the Architect and Owner's Engineering Consultants. As the Architect and Owner's Engineering Consultants progress with the preparation of the Schematic Design, Design Development and Construction Documents (for any phase of the Project if the Work has been broken down into Phases in accordance with the Contract Documents), the Construction Manager shall prepare and update, at the conclusion of the Schematic Design and Design Development phases and at such other appropriate intervals required by the Contract Documents or as otherwise agreed to by the Owner, Construction Manager and Blue Star, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for review by the Architect, Blue Star, and Owner's Engineering Consultants (as applicable) and for the Owner's approval. The Construction Manager shall inform the Owner and Blue Star when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers
The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for review by the Architect, Blue Star, and Owner's Engineering Consultants and for the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction (the "**Procurement Schedule**") which shall include a description of the items to be ordered and the required order dates in order to avoid delay to the schedule of the Work. Owner may supplement the Procurement Schedule by written notice to the Construction Manager and the Construction Manager shall amend the Procurement Schedule to reflect such items and set out the required order dates. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. Procurement prior to the parties' execution of the GMP Amendment shall be accomplished by Work Authorization Amendment entered into pursuant to Section 2.1.4.2 above and Section 2.2.10 below. If the Owner elects to procure directly any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions reasonably acceptable to the Construction Manager, and the cost of such items shall be included the GMP Proposal. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all such contracts for these items to the Construction Manager and the cost of such items shall be included in the GMP Proposal, and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility
The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with Applicable Laws as defined herein, but the Construction Manager shall promptly report in writing to the Architect, Owner's Engineering Consultants (to the extent of a nonconformity in their design documents), Blue Star, and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect or the Owner's Engineering Consultants (with regard to their respective design documents) may require.

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§ 2.1.9 Notices and Compliance with Laws
The Construction Manager shall comply with all Applicable Laws as defined herein, including but not limited to statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents. Construction Manager's obligation for compliance shall also apply to changes in or additions to Applicable Laws effective as of the time of the Construction Manager's respective performance, subject to Construction Manager's right to make a claim for a change in the Contract Time pursuant to Section 8.3 of the General Conditions or an increase in the Contract Sum to the extent Construction Manager can establish that it incurred additional Cost of the Work arising from the change in or addition to Applicable Laws.

§ 2.1.9.1 M/WBE Requirements. Without limiting the foregoing, Construction Manager shall comply with all M/WBE and/or Small Business or other Disadvantaged Business requirements as provided in the Owner's solicitation documents in connection with the selection of the Construction Manager for the Project or as otherwise adopted by the Owner for the Project prior to the execution of the GMP Amendment and shall meet such M/WBE and/or Small Business or other Disadvantaged Business participation goals as established by the Owner for the Project or exercise good faith efforts to do so.

§ 2.1.9.2 Prevailing Wages. Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Construction Manager and upon any Subcontractor under him to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the Contract. A Construction Manager or Subcontractor who violates the provisions of Chapter 2258, Government Code, shall pay to Owner, in addition to such other sums for which the Construction Manager is liable under the statute, the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

Except as may otherwise be set out in the Agreement, the applicable prevailing rate of per diem wages for each respective craft or type of worker performing work by or through the Construction Manager (including workers of Subcontractors of all tiers) pursuant to the Contract and the prevailing rate for legal holiday and overtime work shall be the respective prevailing wage rates for _____ as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a *et seq.*, as currently amended.

2.1.10 VALUE ANALYSIS [VALUE ENGINEERING]
Construction Manager will provide on-going value analysis studies on construction systems and major construction components, including but not limited to the mechanical system, exterior envelope, structural system, roofing system, lighting and power service. The value analysis will be summarized in report forms and distributed to the Owner, Blue Star, the Architect, and the Owner's Engineering Consultants (with regard to their respective design documents).

§ 2.1.11 SENIOR PROJECT PERSONNEL
Construction Manager has identified to the Owner its Senior Project Personnel, including the Construction Manager's Project Manager who will be responsible for the Project, and all full-time supervisory personnel for the Project, including the superintendent, and their respective reimbursement rates (for salaries and benefits) as set out in **Exhibit C** (**Construction Manager's Personnel Rates Schedule**). Construction Manager shall also identify any consultants that will be performing services for the Project. After execution of this Agreement by the Owner, Construction Manager shall not remove or replace the persons or entities assigned to the Project except with the Owner's written consent, which consent shall not be unreasonably withheld. Construction Manager shall not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Construction Manager shall promptly update Owner in writing with the list of persons and consultants if they change during the course of the Project.

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§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL

§ 2.2.1 No later than thirty (30) days after receipt of written request from Owner or as otherwise agreed by the parties, the Construction Manager shall prepare a Guaranteed Maximum Price proposal (the "GMP Proposal") in a form approved by the Owner for the Owner's review and acceptance. The Guaranteed Maximum Price in the GMP proposal shall be computed as the sum of the following:

a. the Construction Manager's Estimated Cost of the Work (as approved by the Owner) which consists of the sum of the guaranteed or fixed prices of the Work, including those items procured by the Construction Manager pursuant to Section 2.1.7 above, and the reasonable, good faith estimate of the cost of the balance of the Work;

b. a deductive amount for any savings incurred for bought-out, completed or partially completed Work included in duly executed Work Authorization Amendments approved prior to establishing the Guaranteed Maximum Price;

c. the Construction Manager's Contingency pursuant to (and as limited by) Section 2.2.4 below;

d. the Construction Manager's Fee in accordance with Section 5.1.1 below; and

e. Allowances as approved by the Owner.

The Owner and Blue Star shall be entitled to full access to all details of the process of developing the GMP Proposal. It is the intent of this Agreement that allowances, assumptions, clarifications, and any other loose elements that could lead to change orders after the Guaranteed Maximum Price is determined be held to a minimum. It is also the intent of this Agreement that all applicable elements of the Project be the subject to the trade contractor and subcontractor selection requirements of Chapter 2267 of the Texas Government Code (located at Chapter 2269 after September 1, 2013).

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect or the Owner's Engineering Consultants (with regard to their respective design documents), the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the GMP Proposal a written statement of its basis, which shall include the following:

a. A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

b. A detailed list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP Proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;

c. A list of allowances and a statement of their basis;

d. A statement of the proposed Guaranteed Maximum Price, broken down into a Schedule of Values (in compliance with the requirements of Section 7.1.5 below), including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;

e. The anticipated dates of Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based (or the date required for each if such required date has been incorporated into the Contract prior to the submission of the GMP Proposal) and those Critical Milestones identified by the Owner; and

.f A date by which the Owner must accept the Guaranteed Maximum Price (such date being no less than sixty days after submission of the GMP Proposal to Owner).

In the GMP Proposal, the Construction Manager shall also identify which Drawings and Specifications the Construction Manager contends will require revision in order to reflect the Construction Manager's proposed assumptions and clarifications and describe in detail the revisions to Drawings and Specifications which Construction Manager contends will be necessary if such assumptions and clarifications are agreed upon per Subparagraph 2.2.8.

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Except as otherwise agreed in writing by the parties, Construction Manager shall prepare and submit its GMP Proposal to the Owner within thirty (30) days following the issuance of Construction Documents for the Work sufficiently complete to allow the Construction Manager to "Buy-Out" the Work (subject to allowances, assumptions, and qualifications reasonably proposed by Construction Manager and agreed by Owner).

§ 2.2.4 It is understood and agreed that the Guaranteed Maximum Price for the Work shall include a Construction Manager's Contingency in a reasonably appropriate amount not to exceed two percent (2%) of the Estimated Cost of the Work component of the Guaranteed Maximum Price (without such Contingency) as established in the GMP Amendment (it shall not be adjusted for subsequent changes in the GMP) for the sole purpose of protecting the Construction Manager from Cost of the Work over-runs in line items in its Schedule of Values and other Cost of the Work that were not included in the Guaranteed Maximum Price. Such costs reimbursable from Construction Manager's Contingency must be costs that would be reimbursable as Cost of the Work Section 6.1 through 6.7 below. Costs that are not reimbursable under Section 6.8 below shall not be reimbursable from Construction Manager's Contingency.

It is expressly understood and agreed that, to the extent that a Change Order is warranted under the terms of this Agreement, the Construction Manager's Contingency fund is not to be utilized for unforeseen conditions for which the Owner is responsible hereunder, events of force majeure (see Section 8.3 of the General Conditions), or design changes which constitute a change in the scope of the Work and for which the Owner is responsible hereunder. Sums may be charged to the Construction Manager's Contingency only to the extent that the same have been paid or are to be paid by Construction Manager. Notwithstanding anything in the Contract Documents to the contrary, no charge shall be made against the Construction Manager's Contingency without Owner's written consent, such consent not to be unreasonably withheld.

§ 2.2.5 The Construction Manager shall meet with the Owner and Blue Star to review the GMP Proposal. In the event that the Owner and/or Blue Star discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP Proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the GMP Proposal in writing within the time required for the acceptance of the GMP Proposal, the GMP Proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment ("GMP Amendment") amending this Contract. The GMP Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect (or the Owner's Engineering Consultants with regard to their respective design documents) to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the GMP Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect (or the Owner's Engineering Consultants with regard to their respective design documents) of any inconsistencies between the GMP Amendment and the revised Drawings and Specifications, and such notice shall describe in detail each inconsistency.

§ 2.2.9 To the extent any sales, rental or use of labor, equipment or materials for the Project are subject to sales or use tax under Applicable Law, the Construction Manager shall include in the Guaranteed Maximum Price all such sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the GMP Amendment is executed.

§ 2.2.10 As noted in Section 2.1.4, some phases of the Work may be ready for construction before it is appropriate to arrive at an overall Guaranteed Maximum Price for the entire Project. If the Owner elects to proceed with any packages of the Work before the parties arrive at an overall Guaranteed Maximum Price, the Construction Manager shall develop GMP Proposals for any phases of the Work identified by the Owner.

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§ 2.2.10.1 Until a Guaranteed Maximum Price for the entire Project has been established and accepted by the Owner, the Construction Manager and Owner agree to use the Work Authorization Amendment in a mutually acceptable format to authorize work to begin based on a specified scope and a specified "not to exceed" price. The price and the scope of Work identified with each previously approved Work Authorization Amendment will be included in the Guaranteed Maximum Price at the time the Contract Documents are sufficiently complete to establish the Guaranteed Maximum Price ("GMP"), subject to any limitation on the Construction Manager's Contingency as provided in Section 2.2.4 above. Prior to the Owner's acceptance of the Guaranteed Maximum Price for the entire Work, Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work for Construction Phase services, except as the Owner may specifically authorize in an executed Work Authorization Amendment as required herein.

§ 2.2.10.2 Except as otherwise agreed by Owner and Construction Manager, when a GMP Proposal for any portion of the Work is agreed upon by the parties pursuant to a Work Authorization Amendment, the Guaranteed Maximum Price amounts for those portions which have been previously approved by the Owner shall be combined and shall be used in pricing those portions of the Work covered by such Guaranteed Maximum Price proposals, subject to any limitation on the Construction Manager's Contingency as provided in Section 2.2.4 above, and all separate Guaranteed Maximum Price proposals previously agreed to by the parties shall be of no further force and effect.

§ 2.2.11 GMP ADJUSTMENT FROM SUBCONTRACT BUY-OUT. *Except as otherwise expressly authorized in writing by Owner*, Construction Manager shall enter into written Subcontracts (which for purposes hereof includes a subcontract agreement covering any Self-Perform Work expressly authorized by Owner, supply agreements and purchase orders) for the respective scope of the Work with fixed pricing terms and in accordance with the requirements of the Contract Documents *no later than sixty (60) days after the GMP Proposal has been accepted.* Construction Manager shall provide Owner with copies of the respective executed Subcontracts with the pricing terms no later than three (3) business days after such Subcontracts have been entered into. In no event shall Construction Manager commence Self Perform Work, order materials, or permit a Subcontractor to commence its portion of the Work prior to furnishing Owner with a copy of such executed Subcontract.

The parties acknowledge that, when most of the Subcontracts covering the entire Work are entered into, but in no event less than 90 days after the GMP Proposal has been accepted, and at Owner's request, the Estimated Cost of the Work in the individual line items on which the Guaranteed Maximum Price is based shall be subject to adjustment as provided herein to reflect the fixed Cost of the Work pursuant to the Subcontracts (referred to herein as "Buy-Out"). As Buy-Out occurs, Construction Manager shall provide a proposed adjustment to the respective line items in the Schedule of Values to reflect the Cost of the Work fixed by the respective Subcontracts. To the extent that the fixed Cost of the Work is less than the Estimated Cost of the Work for a respective line item, such line item shall be reduced accordingly and the Construction Manager's Contingency shall be increased accordingly. To the extent that the fixed Cost of the Work is greater than the Estimated Cost of the Work for a respective line item, the Guaranteed Maximum Price shall not be increased, but such line item shall be increased by such amount to the extent such amounts are available from Construction Manager's Contingency or from an established "savings" from another line item (with that line item being reduced accordingly).

However, such transfer to Construction Manager's Contingency from line item "savings" achieved from Subcontract Buy-Out shall not exceed, in the aggregate of all savings transferred, 50% of the amount established in the Construction Manager's Contingency under Section 2.2.4 above. To the extent the aggregate amount of line item "savings" achieved from Subcontract Buy-Out exceeds such sum, the Guaranteed Maximum Price shall be reduced in the amount of such excess line item "savings".

The adjustments as provided herein shall be incorporated by Change Order, with any net savings reducing the Guaranteed Maximum Price accordingly.

§ 2.2.11.1 The Construction Manager shall document the actual Cost of the Work at Buy-Out as compared to the GMP Proposal and shall report this information to the Owner monthly and with Construction Manager's recommendation for selection of a bid/proposal for each subcontracting package.

§ 2.2.12 The GMP Proposal must include a written description of how it was derived that specifically identifies the clarifications and assumptions made by the Construction Manager in the GMP and the monetary amounts

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attributable to them. The GMP Proposal shall include, without limitation, a breakdown of Construction Manager's estimated Reimbursable Conditions Costs and estimated Costs of the Work organized by trade; the amount of the Construction Manager's Contingency; and the Construction Manager's Fee for the Construction Phase.

§ 2.2.13 The GMP Proposal shall allow for reasonably expected changes and refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope. The GMP Proposal shall also expressly include all Reimbursable Conditions Costs and such other costs and expenses directly incurred by the Construction Manager in connection with its administration and supervision of the Work through Final Completion of the Work, regardless of whether Construction Manager achieves Final Completion within any deadlines set forth in Section 2.3.3.2 below.

§ 2.2.14 The GMP Proposal and all supporting documents shall identify and describe all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work covered thereby and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and/or workmanship shall prevail over all other interpretations.

§ 2.2.15 The GMP Proposal shall adopt and incorporate all of the terms and conditions of the Contract. Any proposed deviation from the terms and conditions of the Contract must be clearly and conspicuously identified to the Owner in writing and specifically accepted by the Owner. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner and the terms of this Agreement and Modifications thereto (other than the GMP Amendment), the terms of the Agreement and such Modifications shall control.

§ 2.2.16 Owner may accept or reject a Guaranteed Maximum Price Proposal or attempt to negotiate its terms with Construction Manager. Upon acceptance by the Owner of a GMP Proposal in writing, both parties shall execute the GMP Amendment incorporating the agreed upon terms of the GMP Proposal. If the Owner rejects the GMP Proposal or the parties are unable or unwilling to agree on a GMP, the Owner may terminate this Agreement as provided in Article 10 below.

§ 2.2.17 In submitting the GMP Proposal, the Construction Manager represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically excepted by the Owner. Upon Owner's acceptance of the GMP Proposal, the Construction Manager shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project or applicable Work Package as described in and reasonably inferable from the GMP Proposal or the supporting documents used to establish the GMP, except as expressly qualified in the GMP Amendment.

§ 2.2.18 Following the Owner's acceptance of the GMP Proposal and the parties' execution and of the GMP Amendment, Construction Manager shall continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, clarifications, exclusions and value engineering issues identified in the GMP Proposal. During the Construction Documents stage, the Construction Manager shall deliver a monthly status report to the Owner describing the progress on the incorporation of all qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Work, or any respective portion thereof, as stated in a written Notice to Proceed issued by the Owner or as stated in the GMP Amendment.

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§ 2.3.1.2 The Construction Phase (as such term in used in this Agreement) shall commence on the date as stated in a written Notice to Proceed issued by the Owner for the commencement of Work (or any portion thereof) or as expressly stated in the GMP Amendment.

§ 2.3.2 Administration

§ 2.3.2.1 Except as may be otherwise directed or approved by Owner, all Subcontracts (including purchase orders) shall be awarded pursuant to competitive bids and according to the following procedure. The procedure for obtaining such bids shall be approved by the Owner and shall comply with and be governed by the requirements of Subchapter F of Chapter 2267 of the Texas Government Code (located at Chapter 2269 of the Texas Government Code after September 1, 2013). All bids shall be opened in the presence of the Owner or its duly designated representative. The Owner shall then determine, with the advice of the Construction Manager and Blue Star, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.1.1 If the Construction Manager intends to perform Work by its own forces (Self-Perform Work), other than supervision of the Work, or through a Related Party (as defined in Section 6.10 below), Construction Manager shall notify Owner, in writing, of such intent and how the bid pricing will be obtained (whether on the basis of a stipulated sum, unit price, or cost of the work plus a stipulated mark-up subject to a guaranteed maximum price). Construction Manager must obtain Owner's written approval prior to solicitation of bids. If Owner approves Construction Manager's request to submit pricing for Self-Perform Work or from a Related Party, Construction Manager must competitively bid as required herein for all Subcontracts; provided, however, all bids, including Construction Manager's bid (which must fully comply with all applicable requirements for bids from Subcontractors) and the Related Party's bid, shall be submitted directly to Owner (or its designated representative) and shall be opened by Owner (or its designated representative).

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when the Owner requires a higher bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price as provided in Section 2267.256(b) of the Texas Government Code (located at Chapter 2269 of the Texas Government Code after September 1, 2013).

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Contract. Without limiting the foregoing, Construction Manager's subcontract and purchase order forms shall be subject to approval of Owner and shall provide that subcontractor shall perform its portion of the Work in accordance with all applicable provisions of this Agreement and the other Contract Documents. Subcontracts shall not be awarded on the basis of cost plus a fee.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "Related Party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 2.3.2.1.

§ 2.3.2.5 The Construction Manager shall schedule and conduct regular, weekly meetings at which the Owner, Blue Star, Architect, Construction Manager and appropriate Subcontractors can discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Blue Star, and Architect.

§ 2.3.2.6 At or before the execution of the GMP Amendment, the Construction Manager shall prepare and submit to the Owner, Blue Star, and Architect a construction schedule for the Work ("**Construction Manager's Progress Schedule**") and submittal schedule in accordance with Section 3.10 of the General Conditions. Reference in the General Conditions to the "Contractor's Progress Schedule" shall mean the Construction Manager's Progress Schedule.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project in accordance with Section 3.10 of the General Conditions. On a monthly basis, or otherwise as required by Section 3.10 of the General Conditions or as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner, Blue Star, and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner, Blue Star, and Architect in the weekly meetings held

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pursuant to Section 2.3.2.5 above, a daily log containing a record for each day of weather for the previous week, portions of the Work in progress, identification of the Subcontractors working on the site and the number of workers on site, identification of equipment on site, problems that might affect progress of the work (including weather impact from the previous week), accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner, Blue Star, and Architect and shall provide this information in its monthly reports in accordance with Section 2.3.2.7 above.

§ 2.3.2.9 The Construction Manager shall coordinate the work of the various Subcontractors and develop and maintain protocols and onsite procedures with Subcontractors that will facilitate early discovery and mitigate the impact of coordination problems and potential Subcontractor defaults that could adversely impact the cost and progress of the Work

§ 2.3.3 CONTRACT TIME

§ 2.3.3.1 The Contract Time with regard to the Construction Phase Services shall be measured from the Date of Commencement as provided pursuant to Section 2.3.1.1. It is currently intended by the parties that the Date of Commencement of the Construction Phase shall be on or about _____, 20__ (subject to earlier commencement of a portion of that Work by Work Authorization Amendment).

§ 2.3.3.2 Time is of the essence of this Contract. The Construction Manager shall diligently prosecute the Work and achieve Substantial Completion of the Work not later than _____ calendar days from the date of the commencement of the Work or as otherwise as set forth in the applicable Work Authorization Amendment or the GMP Amendment, subject to adjustments as provided in the Contract Documents. After Substantial Completion, the Construction Manager shall diligently continue to prosecute the Work to Final Completion and, except as otherwise expressly agreed in the GMP Amendment, shall achieve Final Completion not later than sixty (60) calendar days from the later of the Date of Substantial Completion or receipt of Owner's final "punch list."

§ 2.3.3.3 Owner retains the right to identify specific areas for early Substantial Completion sufficient to allow for installation of Owner's fixtures, furniture, and equipment, phased use or partial occupancy of the facility, or providing access to Owner's Separate Contractors or vendors for finish-out work. The parties acknowledge that a Work Authorization Amendment, the GMP Amendment, or such other Modification of the Agreement may create such milestones requiring certain phases or scopes of work to be substantially performed or completed at certain specified times. Collectively, the times required for early Substantial Completion and the milestones described above are referred to in the Contract Documents as "**Critical Milestones**". The Critical Milestones made a part of the Contract are critical elements of the Contract Time requirements under the Contract and are "of the essence" of the Contract.

§ 2.3.3.4 The Owner reserves the right to modify or revise the Critical Milestones and the Project Schedule by written notice to Construction Manager. In the event that Construction Manager intends to request an increase in the Contract Sum or Contract Time as a result of such modification or revision of the Critical Milestones or the Project Schedule, the Construction Manager shall strictly comply with the notice requirements set forth in Article 15 of the General Conditions. If Construction Manager fails to provide notice as required by Sections 15.1.2 and 15.1.4 of the General Conditions within ten (10) days after receipt of Owner's notice with regard to the modification or revision of the Critical Milestones or the Project Schedule, the Construction Manager shall be deemed to have waived any right to seek or recover an increase in the Contract Sum or Contract Time as a result thereof. Such change in the Contract Time requirements shall be incorporated into the Contract Documents by Change Order or Construction Change Directive if the Construction Manager wrongfully fails or refuses to execute the Change Order.

§ 2.3.3.5 In the event Construction Manager shall fall behind schedule for any reason which does not justify an extension under Section 8.3 of the General Conditions of the Substantial Completion Date or any other Contract Time requirements, Construction Manager shall, within ten (10) days after written request of Owner, develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower,

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overtime, material expediting, re-sequencing of the Work and other steps Construction Manager shall take to meet the requirements of the Contract with regard to the Contract Time. Construction Manager shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the scheduled recovery efforts, except as to causes of delay to the critical path not the fault of the Construction Manager under Section 8.3 of the General Conditions. No approval or consent by the Owner or any plan for re-sequencing or acceleration of the Work submitted by Construction Manager pursuant to this Section shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such re-sequencing or the failure of the Construction Manager to meet the Substantial Completion Date or other requirements of the Contract with regard to the Contract Time.

§ 2.3.3.5.1 Owner shall additionally be entitled to direct the acceleration or re-sequencing of the Work in order to achieve completion prior to the required date for Substantial Completion or to meet any other Contract Time requirements of the Contract, and Construction Manager shall be reimbursed for the amount of the premium portion of overtime actually incurred in respect thereto and shall be entitled to an increase adjustment to the Contract Sum to the extent of the premium portion of overtime so incurred. Before proceeding with any such Owner-directed acceleration plan under this subsection, the Construction Manager shall have received the Owner's prior written approval of the plan and its anticipated not-to-exceed cost.

§ 2.3.3.6 Except as provided in the Project Schedule approved by the Owner or in Section 8.3 and Article 15 of the General Conditions, adverse weather conditions are not anticipated to impact the progress of Construction Manager's work (allowance has been made in the Project Schedule and in the Construction Manager's Progress Schedule for weather conditions, other than delay due to adverse weather conditions abnormal for the period of time). However, Construction Manager will record on a daily basis whether and how its job progress has been materially affected by such conditions. Any such day lost due to adverse weather conditions (except such delay for which Construction Manager is entitled to an extension of the Contract Time under Section 8.3 and Article 15 of the General Conditions) shall be made up by Construction Manager performing work on the ensuing Saturday or by extended hours during that week or with best efforts the ensuing Sunday, and treating such as a work day for the purpose of complying with and meeting the Construction Manager's Progress Schedule (prior to such delay) and the Contract Time requirements, including the Critical Milestones and the Project Schedule. Notwithstanding the foregoing, it is expressly understood that no application for extension of time will be made unless the critical path of the project is materially affected. The Construction Manager will provide written explanation and CPM schedule evidencing such impact has occurred. Construction Manager will notify Owner of any such delay in writing, and on a monthly basis submit a report to the Owner substantiating any days claimed to have been lost, over and above those allotted for in the Construction Manager's Progress Schedule, due to adverse weather conditions.

For purposes hereof, weather conditions are "abnormal for the period of time" to the extent that the cumulative number of days of delay to the critical path as a result of adverse weather conditions exceeds ___ calendar days in any ___ day period. Provided, however, no day on which substantial Construction Manager forces are able to perform critical path work on the Project for more than fifty percent (50%) of the usual workday will be counted as day of delay.

§ 2.3.3.7 LIQUIDATED DAMAGES. The Construction Manager acknowledges and agrees that, if the Construction Manager fails to achieve Substantial Completion of the entire Work and to meet the completion requirements of the Critical Milestones, if any, within the Contract Time as established by the appropriate Work Authorization Amendment, the GMP Amendment, or other Modification of the Agreement, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be difficult to ascertain. Therefore, the Owner and Construction Manager agree that, if the Construction Manager shall neglect, fail, or refuse to achieve Substantial Completion of the entire Work by the date required by the Contract Documents for Substantial Completion of the entire Work or to meet the completion requirements of the Critical Milestones, if any, subject to adjustments in the Contract Time as provided in the Contract Documents, then the Construction Manager (and the Construction Manager's Surety, if any, in the case of default) agrees to pay to the Owner as Liquidated Damages, and not as a penalty or forfeiture, the sum or sums for each day of such delay as set forth below:

> the sum of and no/100 ($_____) Dollars per day for each day of delay in achieving Substantial Completion of the entire Work.

Such Liquidated Damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work or relevant portion thereof, but shall not be in lieu of any actual, direct

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costs incurred by Owner in supplementing, accelerating, completing, or correcting the Work resulting from Construction Manager's breach of its obligations arising under the Contract, including all design and consulting costs also arising therefrom. The Owner may deduct Liquidated Damages described in this Subsection from any unpaid amounts then or thereafter due the Construction Manager under this Agreement. Any Liquidated Damages not so deducted from any unpaid amounts due the Construction Manager shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to the highest lawful rate of interest payable by the Construction Manager.

In no event will the total amount of Liquidated Damages exceed the sum of $_____.

§ 2.3.3.7.1 To the extent that the parties enter into a Work Authorization Amendment for a portion of the Work, the parties may agree therein to a required Substantial Completion Date for such portion of the Work and separate Liquidated Damages for the Construction Manager's failure to achieve Substantial Completion of such portion of the Work within the Contract Time requirements provided therein.

§ 2.3.4 THE WORK OF THE CONTRACT

§ 2.3.4.1 The Construction Manager shall fully execute the Work described in the Contract Documents or reasonably inferable by the Construction Manager as necessary to produce the results indicated by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.3.4.2 The Construction Manager shall perform the Work at the location or locations described in the **Project Site Description** attached hereto as **Exhibit A** (the "Project Site"). The Construction Manager shall confine its operations and restrict its staging and storage of machinery, equipment, and materials to those areas within the Project Site or to such other areas authorized in writing by the Owner or permitted by the authorities having jurisdiction for those improvements required in the public way (the "Project Boundaries/Staging Areas Plan"). On or before submitting its GMP Proposal to Owner, Construction Manager shall furnish Owner with its proposed Project Boundaries/Staging Areas Plan for Owner's approval. Except with Owner's written approval, no Work shall commence on the Project Site prior to the Owner's approval, in writing, of the Construction Manager's Project Boundaries/Staging Areas Plan. Construction Manager shall not encumber the Project Site and adjacent areas with any materials or equipment and shall arrange and maintain its materials and equipment in an orderly manner so that Owner's Separate Contractors shall have free and unimpaired access to and within the Project Site and any construction occurring there and in adjacent areas.

§ 2.3.4.2.1 The Owner reserves the right to make reasonable modifications or revisions to the Construction Manager's Project Boundaries/Staging Areas Plan by written notice to Construction Manager or by a Modification of the Agreement and **Exhibit A** attached hereto. In the event that Construction Manager intends to request an increase in the Contract Sum or Contract Time as a result of such modification or revision of the Construction Manager's Project Boundaries/Staging Areas Plan, the Construction Manager shall strictly comply with the notice requirements set forth in Section 15.1.2 of the General Conditions.

§ 2.3.4.3 The Construction Manager shall furnish only skilled and properly trained staff for performance of the Work. The key members of the Construction Manager's staff shall be Construction Manager's Senior Project Personnel identified under Section 2.1.11 above and in the **List of Designated Representatives and Contact Persons [including Construction Manager's Senior Project Personnel]** attached hereto as **Exhibit B**, and such other persons agreed upon with the Owner, any such agreement not to be unreasonably withheld. Such key members of the Construction Manager's staff shall not be changed without the written consent of the Owner, unless such person becomes unable to perform any required duties due to death, disability, transfer, or termination of employment with the Construction Manager. Without limiting the foregoing, during the performance of the Work, the Construction Manager shall keep a competent superintendent at the Project site at all times, fully authorized to act on behalf of the Construction Manager. Notice from the Owner to one of Construction Manager's designated representatives identified in **Exhibit B** in connection with defective Work or instructions for performance of the Work shall be considered notice of such issues to the Construction Manager.

§ 2.4 Professional Services

Section 3.12.10 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

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§ 2.5 Hazardous Materials
Section 10.3 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES
§ 3.1 Information and Services Required of the Owner
§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements. Construction Manager shall immediately give written notice to Owner upon each determination by Construction Manager that any of the 'full information' referenced in the immediately preceding sentence is not being timely provided by Owner, with such notice detailing what information is not being timely provided.

§ 3.1.2 Prior to the execution of the GMP Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract, to the extent required for compliance with Section 56.054 (e) of the Texas Business & Commerce Code. Thereafter, the Construction Manager may only request such evidence if a change in the Work materially changes the Contract Sum or to the extent Owner is otherwise required to provide such information by Applicable Law. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

§ 3.1.3 The Owner has established an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies, as determined in Owner's sole discretion, for changes in the Work and other costs which are the responsibility of the Owner.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by Applicable Law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Owner shall be obligated to furnish only those items described in Paragraph 3.1.4 and its subparagraphs as are reasonably necessary.

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§ 3.2 Owner's Designated Representative
The Owner's designated representative(s) for the Project is (are) set forth in the **List of Designated Representatives and Contact Persons** attached hereto as **Exhibit B** and incorporated fully herein. Such designated representative(s) shall have such authority to act on behalf of the Owner with respect to the Project as specifically set forth in **Exhibit B**. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of the General Conditions, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish such legal, insurance and accounting services, including auditing services, that it may determine to be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect
The Owner has retained an Architect to provide those professional services described in the Agreement between the Owner and the Architect, Construction Manager will be furnished a copy of the Architect's Agreement upon request. Owner reserves the right to change the Architect at any time or to modify the terms of its contractual agreement with the Architect. Owner shall give Construction Manager reasonably timely notice of any termination or replacement of the Architect and of any material changes in its contractual agreement with the Architect that bears on the Work hereunder or the responsibilities or liabilities of the Construction Manager arising under this Contract.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
§ 4.1 Compensation
§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as provided in this Section 4.1.

§ 4.1.2 For the Construction Manager's Pre-Construction Phase services described in the Contract Documents, including Sections 2.1 and 2.2 above, and performed prior to the commencement of the Construction Phase of the Work, Construction Manager's total compensation (including reimbursement of costs and expenses) shall be as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Construction Manager will be paid a Pre-Construction Phase Fee in the stipulated sum of _____ Dollars ($ _____), payable as set forth in Section 4.2 below.

§ 4.1.3 Such Pre-Construction Phase Fee shall be Construction Manager's total compensation for the performance of Pre-Construction Phase services. Construction Manager shall not be entitled to reimbursement of costs and expenses incurred in the performance of such services in addition to the Pre-Construction Phase Fee.

§ 4.2 Payments
§ 4.2.1 Payment for Construction Manager's Pre-Construction Phase services shall be paid as follows: _____.

Amounts not in good faith dispute and properly billed and due to Construction Manager which are unpaid « thirty » (« 30 ») days after the invoice date shall bear interest as provided in Subchapter B, Chapter 2251, Texas Government Code.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee, except as limited by the Guaranteed Maximum Price, shall be as follows:

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(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The **Construction Manager's Fee** for the entire Project (including any fee for Preconstruction Phase services) is **_____ and no/100 Dollars ($_____.00)**. This fee shall not be increased for any changes in the Work unless the final Guaranteed Maximum Price for the Project is in excess of **_____ and no/100 Dollars ($_____.00)**, in which case the Construction Manager's fee shall be increased by **__%** of the amount by which the Guaranteed Maximum Price exceeds **$_____.00**.

The Construction Manager's Fee shall be the Construction Manager's complete fee compensation (which includes Construction Manager's profit and indirect overhead) and, together with the payment for the Cost of the Work for those costs which are expressly set forth in Sections 6.1 through 6.7 of this Agreement, shall constitute Construction Manager's sole reimbursement for indirect and direct costs and expenses, general conditions, and profit arising from or attributable to the performance of the Work as described herein.

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

« see Section 5.1.1 above. »

§ 5.1.3 Limitations, if any, on a Subcontractor's reimbursable costs, as well as overhead and profit for changes in the cost of its portion of the Work are, except as otherwise expressly approved in writing by Owner, as provided in **Exhibit E – Change Order Pricing**, and as follows:

In calculating an adjustment to the Guaranteed Maximum Price for a change in the Work, any Subcontractor mark-up (for increases) for indirect and direct overhead costs, administrative costs, and profit shall not exceed ___% of the Cost of the Work to be performed by such Subcontractor and markdowns for decreases shall not be less than ___% of the Cost of the Work to be performed by such Subcontractor.

« »

§ 5.1.4 [Intentionally deleted.]

§ 5.1.5 [Intentionally deleted.]
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

§ 5.2 Guaranteed Maximum Price
§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the GMP Amendment, as it is amended from time to time to reflect additions and deductions by changes in the Work as provided in the Contract Documents. To the extent the Cost of the Work, together with the Construction Manager's Fee thereon, exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

§ 5.2.1.1 Notwithstanding any provision herein to the contrary, no Work is authorized to commence hereunder until a Guaranteed Maximum Price for that Work has been made the subject of the GMP Amendment or a Work Authorization Amendment to this Contract and a Notice to Proceed has been issued by the Owner with regard to such Work (which such Notice to Proceed may be included in the respective GMP Amendment or Work Authorization Amendment.

« »

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§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.2.3 Savings. If the allowable, final, verified, audited amount of the Cost of the incurred by the Construction Manager, together with the Construction Manager's Fee, is less than the Guaranteed Maximum Price, as adjusted in accordance with the Contract Documents, the entire difference shall be credited to the Owner and the final Contract Sum shall be adjusted accordingly.

If the total of the Cost of the Work and the Construction Manager's Fee is greater than the Guaranteed Maximum Price as modified pursuant to the requirements of the Contract, then the Guaranteed Maximum Price shall be the total amount payable by the Owner to the Construction Manager, and all costs of completing the Work in excess of the Guaranteed Maximum Price shall be paid by the Construction Manager.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager shall be entitled to an adjustment in the Contract Time as a result of changes in the Work only as provided in the Contract Documents and subject to the requirements thereof, including the timely notice requirements of Article 15 of the General Conditions.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the GMP Amendment may be determined by any of the methods listed in Section 7.3.3 of the General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "mark-up" as used in Section 7.3.3.3 of the General Conditions and the term "costs" as used in Section 7.3.7 of the General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of this Agreement, unless the Owner has furnished the Construction Manager with prior written approval of the form and substance of a subcontract, in which case such adjustments shall be calculated in accordance with the terms and conditions of that subcontract.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 Notwithstanding the foregoing in this Section 5.3, no change in Construction Manager's fee or overhead will be allowed for any additive or deductive change orders except as specifically provided for in this Agreement.

§ 5.3.6 Except as otherwise expressly provided herein or in the GMP Amendment, in calculating an adjustment to the Guaranteed Maximum Price for a change in the Work resulting in a change to the Construction Manager's Reimbursable Conditions Costs, such adjustment shall be based upon the actual estimated increase or reduction of such costs rather than a percentage or otherwise pre-determined mark-up or mark-down.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7 which are directly related to the Project.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing the GMP Amendment.

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§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, and only to the extent such workers are actually performing Work directly related to the Project. Cost to be reimbursed will be the actual wages paid to the individuals performing the Work.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site, or when stationed off-site with the Owner's prior written approval, but only for that portion of their time required for and actually performing supervisory or administrative services directly related to the Project. Such rates shall not exceed those set forth on **Exhibit C** (**Personnel Rates Schedule**), unless approved in writing by Owner.

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, 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. Such rates shall not exceed those set forth on **Exhibit C**, unless approved in writing by Owner.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. Such costs shall be reimbursed at the fixed rates or with such fixed "mark-up" ("labor burden") as set forth in **Exhibit C**.

§ 6.2.4.1 If a fixed rate or labor burden has been not been set forth in **Exhibit C** for a specific employee or employee classification, all personnel costs for such employee(s) will be subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Construction Manager for services performed for the Project by such employee(s). In such event, employee bonuses and/or costs associated with Employee Stock Ownership Plans (ESOP) for such employee(s) will not be separately reimbursable as Cost of the Work (*i.e.*, must be covered by the Construction Manager's Fee).

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts properly entered into under the Contract Documents.

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 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 Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager 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 Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for Construction Manager-owned or leased vehicles assigned to those personnel defined in Section 6.2.1 and 6.2.2 above, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item

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may not exceed the fair market value of such item at the time such item was placed into use for the Project, subject to the terms and conditions of this Section 6.5.2 and at such rates as provided and limited herein.

§ 6.5.2.1 The projected usage for each piece of equipment to be rented for use on the Project and the estimated total rentals shall be considered by the Construction Manager and discussed with the Owner before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. If the decision is made to purchase equipment for the Project, such purchased equipment shall be considered "job owned". At the completion of the Project, the Construction Manager shall transfer title and possession of all remaining job-owned equipment to the Owner, or Construction Manager may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by Owner and Construction Manager.

§ 6.5.2.2 Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates) and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the Construction Manager.

§ 6.5.2.3 The reimbursable equipment rental rates for equipment owned by Construction Manager or a Related Party shall be at rates subject to Owner's prior approval and shall not exceed 75% of the published rates based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication does not contain information related to the type of equipment rented, the maximum equipment rental rate shall not exceed 75% of the current competitive rental rates form local third party equipment rental companies.

§ 6.5.2.3.1 The aggregate rentals chargeable for each piece of tools or equipment owned by Construction Manager or a Related Party shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

§ 6.5.2.3.2 Fair market value for used material and equipment as referred to in this Contract shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the Work of the Project.

§ 6.5.2.4 Rental charges for equipment not owned by Construction Manager or any of its affiliates, subsidiaries, or other Related Parties and rented from third parties for use in proper completion of the Work shall be considered reimbursable and will be reimbursed at actual costs, as long as rental rates are consistent with those prevailing in the locality. For any lease/purchase arrangement where any of the lease/purchase rental charges were charged to Owner as reimbursable Cost of the Work, appropriate credit adjustments to the Cost of the Work will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the Project.

§ 6.5.2.5 All loses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Construction Manager, and not the Owner, and the cost of such losses shall not be reimbursable under this Contact. However, this limitation is not intended to prevent the Construction Manager from recovering any such loss under the Builders Risk insurance furnished for the Project; to the extent such loss is recoverable.

§ 6.5.2.6 The Construction Manager shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to Cost of the Work or job-owned through aggregate rentals) and such inventory shall be submitted to Owner each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost, (2) acquisition date, (3) approved FMV at the time the piece of equipment was first used on the job, and (4) final disposition.

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§ 6.5.2.7 All costs incurred for minor maintenance and repairs are considered to be covered by the rental rates. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. In addition, repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary; consequently such costs are not reimbursable and are intended to be covered by the rental rates. All mileage associated with equipment is be covered in the rental rate.

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

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 The actual cost of premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, based upon such minimum limits for coverage as required by **Exhibit D** (**Insurance and Surety Requirements**) attached hereto, which rates shall be final for the duration of the Project (and only subject to adjustment for changes in the scope or duration of the Project).

The agreed premium rate for Construction Manager's coverage for General Liability, as required in Exhibit D is as follows:

___% of the Cost of the Work.

§ 6.6.1.1 If Construction Manager elects to purchase subcontractor default insurance (such as SubGuard insurance) in lieu of subcontractor bonds to cover the default of its Subcontractors, such subcontractor default insurance cost shall be reimbursable as Cost of the Work at the rate of _____ percent (___%) of the value of the subcontracts, including the purchase orders, actually enrolled in and covered by such subcontractor default insurance. Any Construction Manager costs incurred in connection with the subcontractor default insurance program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will not be reimbursable as Cost of the Work (i.e., must be covered by the Construction Manager's Fee). If Construction Manager obtains subcontractor default insurance but elects to bond a Subcontractor not covered by such insurance, the amount reimbursable as Cost of the Work for the premium cost of the bond shall not exceed the amount that would have been reimbursable had the Subcontractor been enrolled in the subcontractor default insurance as provided above.

§ 6.6.1.2 Construction Manager shall not be entitled to reimbursement of premium charges for self-insurance coverage furnished by Construction Manager, including self-insured retentions, except as otherwise expressly authorized in writing by the Owner. To the extent that Construction Manager is entitled to reimbursement for self-insurance coverage or "Contractor-Controlled" liability insurance coverage, premium costs shall be reimbursable on a pro-rata basis as a percentage of the completion of the applicable Work

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable under the Contract Documents, excluding, however, such sales or use taxes for which Owner is exempt under Texas law.

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such

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costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of the General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment, directly related to the Work with the Owner's prior approval.

However, any such electronic equipment identified in Section 6.6.6 will be limited to the cost of personal computer hardware, printers, fax machines, and network equipment used at the field office in the normal day-to-day administration, management and control of the Project. The aggregate charges for any such hardware shall not exceed the fair market value of the hardware at the time it was brought to the field office. If the total charges for any particular piece of hardware reach an amount equal to the fair market value, that particular piece of hardware shall be turned over to the Owner whenever it is no longer needed for the Project. If the Construction Manager elects to keep the particular piece of hardware, the Contract Sum shall be credited with a mutually agreeable amount which shall represent the fair market value of the particular piece of hardware at the time it was no longer needed for the job.

§ 6.6.7 Deposits lost for causes due to the Owner's negligence or failure to fulfill a specific responsibility of the Owner in the Contract Documents.

§ 6.6.8 [Intentionally omitted.]

§ 6.6.9 Subject to the Owner's prior approval and to such limitation on commuting and travel expense as provided in Section 6.6.10 below, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.6.10 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work other than commuting expense or travel between the Construction Manager's offices and the Project Site, but only to the extent such personnel's wages for such duties are reimbursable as Cost of the Work under this Article 6. Such expenses incurred by employees of the Construction Manager not permanently stationed at the field office must be approved in advance by the Owner. Commuting expenses are specifically not reimbursable.

Note: At the current time, it is not anticipated that any such costs will be necessary to staff the Project. If, however, the Construction Manager determines that such expenses will be necessary to properly staff the Project, the Owner's advance written approval will be required before any such costs are considered reimbursable.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of the General Conditions, provided that the emergency is not caused by the negligence or failure to fulfill a specific responsibility of the Construction Manager to the Owner as set forth in the Contract Documents or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors.

§ 6.7.3 Costs of repairing or correcting nonconforming Work executed by the Construction Manager or its Subcontractors, Sub-subcontractors (of any tier), or suppliers (of any tier) and costs of repairing or correcting damage to the Work caused by the Construction Manager, or its Subcontractors, Sub-subcontractors (of any tier), or suppliers (of any tier), provided that such damaged or nonconforming Work was not caused or contributed to by the negligence of the Construction Manager or its breach of its contractual obligations arising hereunder, and only to the extent that the cost of repair or correction is not recoverable (exercising reasonable commercial efforts) by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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§ 6.8 Costs Not To Be Reimbursed

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

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;

.2 Expenses of the Construction Manager's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors, Sub-subcontractors (of any tier), and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to comply with or fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

.7 Rental costs of machinery and equipment, except as specifically provided in Section 6.5.2;

.8 Costs, other than costs included in Change Orders approved by the Owner or costs recoverable under the Contract Documents for a Construction Change Directive issued by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.9 Sales, use or similar taxes imposed by a governmental authority related to the Work for which the Owner is exempt under Texas law;

.10 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Construction Manager or its Subcontractors or any tier;

.11 Costs incurred by Construction Manager resulting from the failure of Construction Manager or its Subcontractors to coordinate their work with that of Owner and its separate contractors, if any, after agreeing to the schedules therefor, or failure of Construction Manager r to comply with directives of Owner not in conflict with said schedules; and

.12 Subject to and as limited by Section 9.3.3 of the General Conditions, costs and expenses arising from Construction Manager's indemnity obligations, including but not limited to Construction Manager's costs and expenses in removing or defending against a mechanic's lien claim asserted against the Owner and/or its property.

§ 6.8.2 Costs to repair defective Work and other costs to comply with Construction Manager's warranty obligations under the Contract, except as may be expressly included in Section 6.7.3 above.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 All proceeds from sale of surplus materials and equipment shall accrue to the Owner and be credited to the Cost of Work. Cash or early payment discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment, dividends or refunds on any bond including performance and payment bonds, whether provided by the Construction Manager or Subcontractors, and rebates, dividends, and refunds of any insurance premiums and deposits shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

Construction Manager shall make reasonable efforts to provide Owner with timely notice of all available discounts, rebates, refunds and returns (hereinafter referred to collectively as "discounts"). The Construction Manager shall not obtain for its own benefit any discounts in connection with the Work prior to providing the Owner with reasonable, prior notice of the potential discount and an opportunity to furnish funds necessary to obtain such discount on behalf of the Owner in accordance with the requirements of this Paragraph. In the event that Construction Manager fails to

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provide Owner with timely notice of the availability of any discount, such discount shall accrue to (be credited against) the Cost of the Work.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "Related Party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "Related Party" includes any member of the immediate family of any person identified above.

§ 6.10.2 Construction Manager shall not subcontract with or purchase labor or materials in connection with the Work of the Contract from a Related Party without the written consent of the Owner and compliance with Section 2.3.2.1 above.

§ 6.11 Accounting Records

In addition to the requirements set forth in Article 14 of the General Conditions, the Construction Manager 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 Blue Star and their auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract and the Work hereunder, including but not limited to all records and back-up documentation relating to reimbursable expenses and Cost of Work items. The Construction Manager shall preserve these records for a period of four years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Owner and the Architect by the Construction Manager, on the form required or approved in writing by the Owner, including all supporting documentation as herein provided and in conformity with the requirements of the Contract Documents, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. On or before the 25th day of the month immediately preceding a month in which the Construction Manager will submit an Application for Payment, the Owner, the Architect (if required by the Owner) and the Construction Manager shall meet to review a preliminary draft of such Application for Payment (hereinafter referred to as a "Pencil Draw") prepared by the Construction Manager. The Construction Manager shall revise the Pencil Draw in accordance with any objection or recommendation of either the Owner or the Architect that is consistent with the requirements of the Contract Documents. Such revised Pencil Draw shall be re-submitted by the Construction Manager to the Owner as the Application for Payment due on or before the 5th day of the month immediately following the month in which the Pencil Draw was first submitted.

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

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§ 7.1.3 Provided that all conditions precedent to payment set forth in the Contract Documents have been satisfied, including but not limited to such documentation as required by the General Conditions, and an Application for Payment is received by the Owner and the Architect not later than the «5th » day of the month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the same « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment

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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.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit complete and accurate job cost reports prepared in accordance with Generally Accepted Accounting Procedures detailing all disbursements and payments made or actual costs incurred by Construction Manager for its Reimbursable Conditions Costs and other costs directly incurred by Construction Manager, including its costs for payrolls, petty cash accounts, and invoices on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, less (2) that portion of those for the period covered by the present Application for Payment. Pursuant to Section 6.11 above, Owner and its auditors shall be provided, upon written request, actual backup documentation to reflect those costs set out in the job cost reports submitted in support of each such Application for Payment. In addition to job cost reports, Construction Manager shall furnish copies of all invoices and applications for payment (with back-up documentation) submitted by Subcontractors (including suppliers) for Work performed by such Subcontractors (including suppliers furnishing materials directly to Construction Manager) during the period covered by the Application for Payment and for which payment is sought.

§ 7.1.5 Each Application for Payment shall be based on the most recent Schedule of Values submitted by the Construction Manager in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee and any Allowances and agreed-upon Construction Manager's Contingency shall be shown as single separate items. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner and the Architect may require. This Schedule, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment and determining the amount due for each such Progress Payment but shall not be considered as a basis for increasing or decreasing the GMP. The Schedule of Values shall not be modified or revised without the prior written consent of the Owner and the Construction Manager in each instance.

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

§ 7.1.6.1 In addition to other required items, each Application for Payment shall be accompanied by the following documentation, statements and information, all in form and substance approved by the Owner and in compliance with applicable state statutes:

(A) a duly executed statement from Construction Manager detailing all moneys paid out or costs incurred by it on account of the Cost of the Work and for which payment is sought;

(B) with regard to payments sought for work (labor and materials) furnished by Subcontractors (including vendors or material suppliers), Construction Manager must identify all Subcontractors for whose work payment is being sought in the Application and, in addition to providing such supporting documentation as may be reasonably required or requested by the Owner, provide, for each such Subcontractor the following information: (1) a brief description of the Work performed for which payment is being sought, (2) the agreed upon price or value of the Work, (3) the amount to be retained or withheld from the Subcontractor, and (4) the amount requested for payment to the Subcontractor;

(C) with regard to work performed by Construction Manager or its own forces, Construction Manager must provide an accurate description of the work performed and for which payment is sought, including such supporting documentation required by this Agreement;

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(G) Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions and such other amounts, if any, for which the Owner is authorized to withhold from payment under the terms of the Contract Documents.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). Notwithstanding the foregoing, payments to Construction Manager shall be not subject to retainage for Reimbursable Conditions Costs incurred by Construction Manager and for direct purchases or rentals by Construction Manager of materials, appliances, and equipment, when such retainage is not commercially feasible.

§ 7.1.8.1 Construction Manager shall make such payments included in Construction Manager's Application for Payment to its Subcontractors within the earlier of seven (7) days after receipt of payment from Owner or such time period as required by Applicable Law, and consistent with the requirements of Section 9.6.2 of the General Conditions. Construction Manager shall not retain funds from its Subcontractors to the extent such funds have been requested from Owner and payment has been made to Construction Manager.

§ 7.1.9 Except with the Owner's prior written approval or as otherwise provided in Section 7.1.12 below, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner and the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.1.11 Any reduction or release of retainage, or portion thereof, shall not be a waiver of (1) any of the Owner's rights to retainage in connection with other payments to the Construction Manager or (2) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

§ 7.1.12 Construction Manager shall be entitled to payment for materials suitably stored off the site at a location agreed upon in writing by Owner and Owner's Lender, conditioned on the following:

a. evidence satisfactory to Owner that the stored materials are included in the coverage of insurance policies naming the Owner as a loss payee and Owner's Lender as a mortgagee and loss payee;

b. bills of lading, invoices, and/or bills of sale satisfactory to Owner from the seller, supplier, or fabricator of the stored materials, evidencing the cost of such stored materials and that, upon payment, ownership thereof will vest in the Owner, free of any liens or claims of third parties; and

c. verification (which may, at Owner's election, include physical inspection by Owner or its designated representative) of delivery and suitable storage of such materials in a bonded warehouse or storage yard approved by the Owner (including the Owner's approval of the terms of such storage).

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall not be made by the Owner to the Construction Manager until all of the following **conditions precedent to final payment** have occurred or been fully satisfied:

(A) the Construction Manager has fully performed the Contract, including all punchlist work except for the Construction Manager's responsibility to correct previously performed Work as provided in Section 7.2.2 of the General Conditions and to satisfy other requirements, if any, which extend beyond final payment or which otherwise necessarily survive final payment;

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(B) the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment in conformity with the requirements of the Contract Documents in such time as to give (i) to the Owner's auditor sufficient time as provided in Section 7.2.2 to complete its report, (ii) to the Architect sufficient time as provided in Section 7.2.2 for the issuance of the Architect's final Certificate for Payment, (iii) to the Construction Manager sufficient time provided for its notice of disputed amount to the auditor's report (or the deadline for such notice having passed), and (iv) to the Owner no less than seven days after the last of the foregoing to occur in order to make such final payment;

(C) a final Certificate for Payment has been issued by the Architect;

(D) the Construction Manager has provided its notice of disputed amount to the auditor's report, provided written acceptance of the auditor's report, or has waived any objection to the auditor's report as provided by Section 7.2.3;

(E) the Construction Manager has fully complied with the requirements set forth in Section 7.2.1.1 below and Section 9.10 of the General Conditions; and

(F) any other conditions precedent to final payment expressly set forth in the Contract Documents have been satisfied.

§ 7.2.1.1 The conditions precedent to final payment, which are for the sole benefit of the Owner (and the third-party beneficiaries to this Contract, if any), and not the Construction Manager or its Surety, and which may be waived in whole or in part by Owner, in its sole discretion, shall also include the following:

(A) TO BE DELIVERED / FURNISHED *PRIOR TO OR WITH* THE APPLICATION FOR FINAL PAYMENT:

(1) *With its final Application for Payment*, Construction Manager shall furnish to Owner a release and waiver of the Construction Manager's lien rights and all claims for payment arising under the Contract, unconditioned with regard to all prior payments received (as identified therein) and conditioned (only) with regard the receipt of the final payment identified therein.

(2) *With its final Application for Payment*, Construction Manager shall furnish to Owner a Final Bills Paid Affidavit which conforms to the provisions of the Contract and Applicable Law and which truthfully states that all bills or obligations incurred by Construction Manager through the final completion of the Work have been paid or are as expressly identified and set forth in the Affidavit. Amounts unpaid or claimed to be owed by Construction Manager (including claims asserted by Subcontractors, whether or not disputed by Construction Manager), including such amounts to be paid to Subcontractors from the final payment requested by Construction Manager, shall be fully identified in the Affidavit (by name of person to whom payment is owed or who is claiming payment and the amount owed or claimed to be due).

Such Final Bills Paid Affidavit shall include a statement, under oath, by Construction Manager that, to the best of its information and belief, no person or entity has a claim for payment or has asserted a claim for payment arising from or in connection with the Work performed under this Contract, other than any claim which has been fully paid and duly released or is included in the final Application for Payment or, if Construction Manager knows or believes such a claim exists or has been asserted or made, the statement shall fully disclose the claim by stating the name of the claimant or potential claimant, a description of the work for which payment is claimed, the amount of such claim, and the basis or reason why such claim has not been paid. Such Final Bills Paid Affidavit shall also include an express representation and warranty by the Construction Manager that Construction Manager shall pay each person or entity identified in the Affidavit the amount stated therein within ten (10) days after receipt of the funds requested in the Request for Final Payment.

(3) *Prior to or with its final Application for Payment*, Construction Manager shall furnish to Owner a full, final, and unconditional release and waiver of lien and of all claims for

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payment arising under the Contract from each such Subcontractor who has received full and final payment prior to the submission of the Construction Manager's final Application for Payment.

(4) *With its final Application for Payment*, Construction Manager shall furnish to Owner a release and waiver of lien and all claims for payment arising under the Contract from each such Subcontractor who has not received full and final payment prior to the submission of the Construction Manager's final Application for Payment, such release and waiver being conditioned only upon receipt of payment of the specified amount of the final payment owed to the Subcontractor which matches the amount disclosed to be due to or claimed by the Subcontractor in the Construction Manager's Final Bills Paid Affidavit required under Subsection (A) (2) above.

If Construction Manager and a Subcontractor have a dispute with regard to the amount of the final payment owed to the Subcontractor, such Subcontractor's conditional release and waiver of lien shall state the amount claimed by Subcontractor and the dispute fully identified in the Construction Manager's Final Bills Paid Affidavit.

(B) TO BE DELIVERED / FURNISHED *AT OR BEFORE* FINAL PAYMENT (AS PROVIDED BELOW):

(1) *On or prior to receipt of final payment* (in sufficient time prior to final payment in order for Owner to verify Construction Manager's compliance with the requirements hereof), Construction Manager shall deliver any special guarantees or warranties required by the Contract Documents and assignments of all guarantees or warranties from Subcontractors, vendors, suppliers, or manufacturers (with the addresses and telephone numbers of those Subcontractors or other persons providing guarantees and warranties).

(2) *On or prior to receipt of final payment* (in sufficient time prior to final payment in order for Owner to verify Construction Manager's compliance with the requirements hereof), Construction Manager shall have delivered to Owner three (3) complete sets and one electronic set of Record Documents, reflecting the "As-Built" conditions of the Project at final completion, including, without limitation, all warranties, manuals, instructions, reports, and other such documentation as Owner may have previously requested.

(3) *On or prior to receipt of final payment*, Construction Manager shall furnish to Owner a release of claim and waiver of lien from each Subcontractor who has furnished a notice of claim in attempted compliance with Section 53.056 or 53.057 of the Texas Property Code. If such release is conditional upon receipt of payment by such Subcontractor, Construction Manager shall amend its Final Bills Paid Affidavit furnished in accordance with Subsection (A) (2) above (if necessary) to include such amount of the claim for which receipt of payment is conditioned, together with Construction Manager's representation and warranty to Owner with regard to Construction Manager's payment to the Subcontractor. If Construction Manager is unable to secure such release of claim and waiver of lien from a Subcontractor, final payment shall be conditioned upon Construction Manager bonding around such claim in accordance with Subchapter H of Chapter 53, Texas Property Code, or by providing such other security acceptable to Owner to indemnify Owner from such direct claim of payment by Subcontractor against Owner and to indemnify the property from any asserted lien claim by Subcontractor, including indemnity for legal costs to defend against and/or remove such lien claim.

(4) *Contemporaneous with the receipt of final payment*, Construction Manager shall furnish a full and final, unconditional release and waiver of the Construction Manager's lien rights and all claims for payment arising under the Contract through the final completion of the Work, except for such amount, if any, in dispute with Owner under Section 7.2.3, which amount shall be clearly identified and reserved in such release and waiver. If Construction Manager has received final payment by cashier's check or by such other means as to constitute actual receipt by Construction Manager of such funds at the time of the final payment (not subject to collection or subsequent actual receipt of funds), Construction Manager shall furnish such release and waiver to Owner at the time such

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final payment is received by Construction Manager. Otherwise, Construction Manager shall tender such release and waiver in trust to an escrow agent or legal counsel, as mutually agreed by Owner and Construction Manager, with such release and waiver to be delivered to the Owner upon Construction Manager's actual receipt of such funds.

(5) *Contemporaneous with the receipt of final payment*, Construction Manager shall furnish an amended Final Bills Paid Affidavit to reflect and fully identify any adjustments made with regard to the amount, if any, in dispute with Owner under Section 7.2.3 and adjustments arising from payment disputes with Subcontractors (see Subsection (B) (3) above) as of the date of the final payment.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting of the Work within thirty (30) days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven (7) days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment for the Work with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the General Conditions. The time periods stated in this Section supersede those stated in Section 9.4.1 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without seeking an initial decision, if required pursuant to Section 15.2 of the General Conditions. A notice of the disputed amount shall be made by the Construction Manager to the Owner within twenty-one (21) days after the Construction Manager's receipt of a copy of the Owner's audit report. Failure to submit such notice within this 21-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount, if any, certified in the Architect's final Certificate for Payment.

§ 7.2.4 Provided all other conditions to final payment have been met, the Owner's final payment to the Construction Manager shall be made within seven days after the later of: (a) twenty-one days (21) days after the date required hereunder for the issuance of the Architect's final Certificate for Payment, (b) the date Owner has received Construction Manager's notice of disputed amount to the auditor's report or the deadline for such notice has passed under Section 7.2.3, or (c) forty-five days (45) after the final completion of the Work under the Contract, other than warranty Work or replacement or repair of damaged or non-conforming Work (provided such damage or non-conformance was discovered after Substantial Completion of the Work). The amount of the final payment (less such amount in dispute under Section 7.2.3 and expressly identified and reserved by Construction Manager) shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price as finally adjusted.

.2 Subtract such amounts, if any, which the Architect withholds, in whole or in part, in connection with a final Certificate for Payment as provided in Section 9.5.1 of the General Conditions and such amounts to which the Owner is entitled to withhold from final payment.

.3 Subtract the aggregate of previous payments made by the Owner for the Work.

§ 7.2.5 If, subsequent to Final Payment and at the Owner's request, the Construction Manager incurs costs described in Article 6 (and not excluded from reimbursement under Section 6.8) to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager'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.

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§ 7.2.6 At Owner's election, Owner may issue a joint check payable to the Construction Manager and the respective Subcontractor for the amount owed or claimed by the Subcontractor to be owed to the Subcontractor. In such case, the Construction Manager and the Subcontractor shall unconditionally release the Owner and any lien on the Owner's property with regard to all payment due for the Work performed by the Subcontractor.

§ 7.2.7 If any Subcontractor or supplier refuses to furnish such a release or in the event that a claim for payment or lien has been asserted by a Subcontractor or supplier furnishing work to the Project, Construction Manager shall furnish a surety bond reasonably acceptable to Owner to release such claim against Owner and lien, if any, and otherwise fully comply with the Contract and Applicable Law. If the Construction Manager should fail to obtain a surety bond following the Owner's request, the Owner may, at its option, obtain the surety bond and back-charge the Construction Manager the costs of obtaining the surety bond or continue to withhold such sum as determined, in good faith, by the Owner to be reasonably necessary to protect itself from loss or damage arising from such claim.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of the General Conditions and as set forth in the **Insurance and Surety Requirements** attached hereto as **Exhibit D** and fully incorporated herein.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount ($0.00)
n/a	

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any claim or dispute between the Owner and Construction Manager shall be subject to mediation as provided in this Section 9.1.

§ 9.1.1 The Owner and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement or as otherwise agreed by the parties. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for 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.

§ 9.1.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the Dallas-Fort Worth metropolitan area, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 9.1.3 If the parties do not resolve a dispute through mediation pursuant to this Section 9.1, the method of binding dispute resolution shall be the following: litigation in a state District Court located in the County in which the Project is located or in a United States District Court of the Northern District of Texas.

§ 9.2 The provisions regarding dispute resolution shall survive completion and termination of the Contract.

§ 9.3 Initial Decision Maker

The person or entity noted below will serve as the Initial Decision Maker (if any) pursuant to Section 15.2 of the General Conditions for Claims arising from or relating to the Construction Manager's Construction Phase services:
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the GMP Amendment, the Owner may terminate this Contract upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Contract, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of the General Conditions.

§ 10.1.2 In the event of termination of this Contract pursuant to Section 10.1.1, the Construction Manager shall, as its sole and exclusive remedy, be compensated for Preconstruction Phase services performed prior to receipt of a notice of termination consistent with any compensation terms pursuant to Section 4.1 above. Notwithstanding the foregoing, the compensation under this Section shall not exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the GMP Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

.1 Take the Cost of the Work incurred by the Construction Manager for the Work to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work for the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services for the Work and such amounts which the Owner is authorized to withhold from the Construction Manager by Applicable Law or the Contract.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. Construction Manager's recovery as expressly authorized under this Section 10.1.3 shall be Construction Manager's sole and exclusive remedy in the event of the Owner's termination of the Contract pursuant to Section 10.1.1 above. Notwithstanding the foregoing, the total amount to be paid by Owner to Construction Manager, including all sums previously paid, shall not exceed the Guaranteed Maximum Price.

§ 10.1.3.1 To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

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§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price
Following execution of the GMP Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of the General Conditions.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of the General Conditions shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the GMP Amendment, the amount payable to the Construction Manager under Section 14.1.3 of the General Conditions shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 10.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of the General Conditions. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of the General Conditions, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

§ 10.4 NOTE – Limitation of Damages upon Termination: Construction Manager agrees that, upon Construction Manager's termination for cause (or Owner's termination for convenience), Construction Manager's recovery for damages and lost profits, if any, for Owner's breach (or early termination), shall be limited as set forth in this Article 10 of the Agreement and in Article 14 of the General Conditions.

ARTICLE 11 MISCELLANEOUS PROVISIONS
§ 11.1 Terms in this Agreement shall have the same meaning as those in the General Conditions.

§ 11.2 Ownership and Use of Documents
Section 1.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law
Section 13.1 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment
The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Contract. The Construction Manager shall not assign this Contract without the written consent of the Owner.

Owner may, upon written notice to the Construction Manager and without the consent of the Construction Manager, assign this Contract and Owner's rights hereunder as provided in Section 13.2 of the General Conditions. In addition to and without limiting its rights under Section 13.2 of the General Conditions, Owner may, upon written notice to the Construction Manager and without the consent of the Construction Manager, also assign the rights arising under this Contract to any of the third-party beneficiaries to this Contract expressly identified in the Contract Documents and to any specially created entity owned or controlled by the Owner, provided such entity is or becomes the owner of the property on which the improvements are constructed pursuant to the Construction Contract.

§ 11.5 Other provisions:

§ 11.5.1 Those other documents forming part of this Agreement, and incorporated herein by reference, are as follows:

Exhibit A -- Project Site Description
Exhibit B -- List of Designated Representatives and Contact Persons [including Construction Manager's Senior Project Personnel]
Exhibit C -- Construction Manager's Personnel Rates Schedule
Exhibit D -- Insurance and Surety Requirements

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§ 11.5.2 CONSTRUCTION MANAGER'S DESIGNATED REPRESENTATIVE.
The Construction Manager's designated representative(s) for the Project is (are) set forth in the **List of the Designated Representatives and Contact Persons** attached hereto as **Exhibit B** and incorporated fully herein, who shall have express authority to bind the Construction Manager and who shall render decisions and furnish information promptly when reasonably requested by Owner, so as to avoid unreasonable delay in the services or work of the Construction Manager.

§ 11.5.3 CHANGES IN WORK. As a condition precedent to an increase in the Guaranteed Maximum Price, an extension of the Contract Time, or a recovery of the Cost of Work for performing work outside the scope of this Contract, the Construction Manager must, prior to the performance of any such work, obtain the approval of the Owner in accordance with the Contract Documents. Such prior approval must be obtained by a Change Order agreed to and executed by the parties pursuant to Section 7.2 of the General Conditions or by a Construction Directive issued by the Owner pursuant to Section 7.3 of the General Conditions.

§ 11.5.4 LIMITATION OF REMEDIES FOR DELAY. Except as otherwise provided herein, extensions of time shall be the Construction Manager's sole remedy for any delay, unless the delay shall have been caused by acts constituting interference by Owner with the Construction Manager's performance of the Work, and then, only to the extent that such acts continue after the Construction Manager has provided written notice to Owner of such interference. The Owner's reasonable exercise of any of its rights or remedies under the Contract Documents, regardless of the extent or frequency, shall not under any circumstances be construed as intentional interference with the Construction Manager's performance of the Work.

§ 11.5.5 CONSTRUCTION MANAGER'S REPRESENTATIONS. The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained elsewhere in the Contract Documents) as an inducement to the Owner to execute this Agreement and the GMP Amendment (at the time the GMP Amendment is agreed to and executed by the parties):

.1 that it will perform all Work called for hereunder in a good and workmanlike manner and in accordance with all legal requirements and the Contract Documents;

.2 that it shall strictly comply with and satisfy all legal requirements applicable to the Construction Manager's means and methods of the Work;

.3 that it is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the Work and perform its obligations hereunder;

.4 that it possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of the project to be constructed at the site, and it will perform the Work with the care, skill, and diligence of such a contractor;

.5 that it is able to furnish the tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;

.6 that it is authorized to do business in the municipality in which the Project is located and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.7 that its execution of the Agreement (and the GMP Amendment) and its performance hereunder are within its duly authorized powers; and

.8 that it understands the restrictions imposed on the handling of construction payments received by the Owner pursuant to any Applicable Law and that it will fully comply with those provisions in the handling of all payments made by the Owner to the Construction Manager pursuant to this Agreement.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Construction Manager by law with respect to the Construction Manager's duties, obligations and performance hereunder. The Construction Manager's liability hereunder shall survive the Owner's final acceptance of and payment for the Work. All representations and warranties set forth in this Agreement, including, without limitation,

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this paragraph, shall survive the final completion of the Work or the earlier termination of this Agreement. The Construction Manager acknowledges that the Owner is relying on these representations and warranties in entering into this Agreement with Construction Manager.

§ 11.5.6 RESPONSIBILITY FOR PERMITS AND FEES. Notwithstanding Section 3.7 of the General Conditions (which this provision shall supersede to the extent in conflict therewith) and except as may otherwise be agreed in the GMP Amendment, the parties shall be responsible for and pay those certain permits and fees as follows:

> Owner shall obtain and pay for the building permit. Construction Manager shall be responsible for all other trade permits and inspection fees as provided in Section 3.7 of the General Conditions.

Notwithstanding the foregoing, upon Owner's request and at no increase to the GMP, Construction Manager shall provide reasonable assistance to the Owner in securing the building permit, including paying for (subject to Owner's direct reimbursement to Construction Manager outside the Contract Sum) and picking up the issued permit.

§ 11.5.7 ATTORNEY'S FEES. If any action at law or in equity, including an arbitration proceeding, is necessary to enforce or interpret the terms of the Contract, the Court or the arbitrator(s), as applicable, shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in such proceeding.

§ 11.5.8 AUTHORITY OF ARCHITECT. Notwithstanding any contrary provision hereof or of any Contract Document, no consent, decision, determination, approval or certification to be made by Architect hereunder shall be binding upon Owner unless and to the extent agreed to in writing by Owner.

§ 11.5.9 AUTHORITY OF EACH SIGNATORY. Each signatory hereto represents that it has the authority to execute this Contract on behalf of the respective named party.

§ 11.5.10 LENDER'S REQUIREMENTS. Construction Manager shall provide, upon Owner's request, to the lender or lenders (if any) furnishing financing for the development and construction of the Project (referred to herein collectively as the "Owner's Lender") any Project information that such lender(s) or its (their) designated representatives reasonably require or any such certification that Construction Manager is obligated to provide to the Owner under the Contract Documents. The Construction Manager further agrees, upon Owner's request, to execute such documents as may be reasonably required by the Owner's Lender furnishing financing for the development and construction of the Project and which are consistent with reasonable commercial practices for the financing of a project of the size and scope of the Project, including but not limited to, the following: (a) a subordination of Construction Manager's lien rights (including an lien on removables or fixtures) to any liens of the Owner's Lender securing any obligations arising from the Project; (b) an agreement by Construction Manager to provide notice prior to suspension of the Work or termination of the Contract by Construction Manager and providing Owner's Lender with a reasonable opportunity to cure Owner's default; (c) a contingent assignment of this Agreement to the Owner's Lender in the event of a default by Owner under this Contract or under the documents creating the loan(s), provided that Construction Manager shall not be required to perform additional work for lender unless Owner's Lender has assumed responsibility for payment of such additional work; (d) an agreement by Construction Manager to certify its compliance with the requirements of the Contract Documents; and (e) an acknowledgement that no Change Order or Construction Change Directive resulting in a material increase in the Contract Time or the Cost of the Work will be effective without the consent of Owner's Lender.

§ 11.5.11 MULTIPLE ORIGINAL COUNTERPARTS. This Contract may be executed in multiple original counterparts, each of which shall be of equal dignity. Faxed or electronically scanned signatures shall be sufficient for the execution and delivery of this Contract.

§ 11.5.12 PARTIAL INVALIDITY DOES NOT INVALIDATE CONTRACT. The invalidity of any part or portion of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

§ 11.5.13 SURVIVAL. All provisions of the Contract which by their nature survive termination of this Contract or final completion of the Work, including, without limitation, all warranties, indemnities, indemnity obligations,

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confidentiality obligations, and obligations to arbitrate disputes, shall remain in force and effect after final completion or any termination of the Contract.

« »

ARTICLE 12 SCOPE OF THE CONTRACT

§ 12.1 This Contract represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Contract: see Article 1 above.

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

OWNER:

By: _____

Name: _____

Title: _____

CONTRACTOR [CONSTRUCTION MANAGER]

By: _____

Name: _____

Title: _____

DRAFT

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EXHIBITS TO

AGREEMENT [AIA / A133 - 2009]

BETWEEN

THE CITY OF FRISCO, TEXAS

AND

_____

PROJECT: STADIUM TRACT FACILITIES

EXHIBIT A

PROJECT SITE DESCRIPTION

[See Attached]

EXHIBIT B

LIST OF DESIGNATED REPRESENTATIVES AND CONTACT PERSONS

OWNER'S DESIGNATED REPRESENTATIVE:

_____

An additional Owner's Designated Representative may be added and the Owner's Designated Representative may be changed, effective only upon written notice to the Construction Manager executed by _____.

Without limiting any other provisions of the Contract Documents, all notices of claims for changes to the Contract Time or the Contract Sum, notices of all other claims by Construction Manager or its subcontractors (of any tier) against the Owner, notices of default on the part of the Owner, notices demanding action or requiring cure by the Owner, or notices of termination or required as a condition of termination shall not be effective until and unless received by Owner's Designated Representative, with a copy contemporaneously sent to and received by the following:

_____

No waiver, consent or modification of the terms of the Contract or Construction Manager's obligations to perform thereunder or any other approval shall be effective or enforceable against Owner except to the extent such waiver, consent, modification or approval is in writing and duly executed by Owner's Designated Representative. Without limiting the foregoing, all Change Orders, Change Directives, and Modifications must be executed by Owner's Designated Representative.

BLUE STAR'S DESIGNATED REPRESENTATIVE:

_____

Except as otherwise directed in writing by Owner, Construction Manager shall furnish to Blue Star copies of all notices and written communications by or through Construction Manager to Owner or the Architect, contemporaneously with such notice to Owner and/or Architect. Construction Manager shall cooperate fully with Blue Star with regard to the services it has been retained to furnish to Owner and shall provide Blue Star full access to the Project, to the same extent as required for the Owner and/or Architect. Notices to Blue Star shall be sent to Blue Star's Designated Representative at the address above.

Architect's Designated Representative:

_____

All notices and other written communications to be provided by the Construction Manager to the Architect under the terms of the Contract shall be sent to the Architect's Designated Representative at the address above.

Construction Manager's Designated Representative:

_____

All notices to be provided to the Construction Manager under the terms of the Contract, including but not limited to all preliminary notices for claims for changes in the Contract Time or Contract Sum, all notices of claim, or other written communications that affect the Contract Time or the Contract Sum or that assert any claim by the Owner against the Construction Manager shall be sent to the Construction Manager's Designated Representative at the address above.

Upon written notice signed by the current Construction Manager's Designated Representative or a duly authorized corporate officer of the Construction Manager and delivered to Owner, additional persons may be added as Designated Representatives of the Construction Manager, subject to such restrictions on their authority as specified in the written notice.

Construction Manager's Senior Project Personnel:

Pursuant to Sections 2.1.11 and 2.3.4.3 of the Agreement, Construction Manager's Senior Project Personnel for the Project are:

_____

EXHIBIT C

CONSTRUCTION MANAGER'S PERSONNEL RATES SCHEDULE

[See Attached]

EXHIBIT D

INSURANCE AND SURETY REQUIREMENTS

I. BUILDER'S RISK INSURANCE / PROPERTY INSURANCE COVERAGE.

Prior to commencement of the Work and as otherwise agreed by the parties in writing, **the party noted below** shall obtain and thereafter at all times during the performance of the Work maintain, "**All Risk" ("Special Causes of Loss") Builder's Risk Insurance** insuring the interest of Owner, Owner's Lender (if requested), Construction Manager and Subcontractors (of every tier) as their interest may appear, set forth in the single policy, including coverage against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, for earthquake, theft, vandalism, malicious mischief, falsework, windstorm, and collapse including the coverage available under the so-called "Installation Floater", written on the completed value basis in an amount not less than the Contract Price of Construction Manager's contract (including subcontracts) and all authorized and approved Change Orders. Coverage will include all materials, supplies and equipment that are specifically intended for installation into the Work while such materials, supplies and equipment are temporarily located off the Site of the Work, in transit to the Site of the Work, or are temporarily located or stored off the Site of the Work for the purpose of repair, adjustment or storage at the risk of one of the insured parties.

Except to the extent the Owner (in its sole discretion) elects not to require such coverage, such coverage shall also cover temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, interest expense in connection with any financing, taxes, delay in opening / delay in start-up benefitting Owner, and reasonable compensation for the services and expenses of the Owner's Architect and such other professionals required as a result of such insured loss ("Soft Costs"). To the extent such coverage is required to be provided by the Contract (see below), the specific Soft Costs coverage terms and limits shall be expressly approved by Owner prior to commencement of the Work.

Party to furnish Builder's Risk Insurance: _____.

DEDUCTIBLES. Deductibles shall be $10,000.00, except as follows:

Land Movement	--	$50,000.00 per occurrence;
Flood	--	$25,000.00 per occurrence;
Named Windstorm	–	1% of the value at risk subject to a minimum of $25,000 and maximum of $50,000 per occurrence;
Water Damage	--	$25,000.00 per occurrence.

Losses or claims not paid by insurance because such losses or claims do not exceed the deductible amounts expressly stated above shall be borne by the Construction Manager to the extent Construction Manager's or its Subcontractors' negligence caused or are responsible for the loss. Such costs shall be reimbursable as Cost of the Work, to the extent that such reimbursement does not cause the GMP to be exceeded and to the extent that such cost is the result of the negligence of a subcontractor (of any tier) and is not recoverable by the Construction Manager (by exercising reasonable commercial efforts) from insurance, sureties, or such subcontractor.

STORAGE AND IN-TRANSIT LIMITS. Except as otherwise agreed by Owner and Construction Manager, sub-limits for losses arising from materials, supplies and equipment in transit or in storage off the Site of the Work shall be as follows:

$_____

Except as otherwise agreed by Owner and Construction Manager, deductibles shall be as follows:

See above deductibles.

All such coverage must be written with insurance companies authorized by the state in which the Project is located to provide such insurance coverage in such state and must be written under either standard forms approved by the Department of Insurance of the state in which the Project is located or forms of policies satisfactory to Owner.

Owner, in its sole discretion, shall determine whether to purchase coverage for flood perils and the terms of any such coverage. If Construction Manager is required to furnish Builders Risk and is required to add such coverage to its Builders Risk, Owner shall pay such additional premium charge for flood perils coverage by direct payment to Construction Manager's carrier, outside the Contract Sum and without any mark-up for Construction Manager's Fee.

II. CONSTRUCTION MANAGER FURNISHED LIABILITY INSURANCE

Construction Manager shall provide and maintain in effect at all times during the full term of its Work insurance coverages with Limits not less than those set forth below and subject to the conditions and requirements also set forth below. None of the requirements contained herein, including but not limited to requirements relating to types and limits of coverage, are intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by the Construction Manager under this Agreement or as otherwise provided by law. As used herein, the term "Agreement" shall refer to the AIA A133– 2009 / Owner – Construction Manager Agreement as modified by the parties and to which this Exhibit is attached and such relevant portions of the AIA A201 – 2007 as modified by the parties and incorporated into the Agreement.

A. Coverage Provided

If required by the Owner prior to the GMP Amendment, the Construction Manager shall provide Workers' Compensation, General Liability and Excess Liability insurance coverage for both Construction Manager and Construction Manager's enrolled eligible Subcontractors of every tier through a Contractor Controlled Insurance Program ("CCIP"), the terms of which shall be acceptable to the Owner.

The premium for any insurance coverage required to be furnished by Construction Manager and for which Construction Manager intends to seek reimbursement as Cost of the Work shall be as set forth in Section 7.6.1 of the Agreement. Any Insurance Percentage Rate agreed to by the Owner and set forth in the Agreement shall be fixed for the duration of the Project and shall not be subject to audit.

Construction Manager shall secure and cause to be maintained the following coverages:

1. **Commercial General Liability**. Construction Manager shall provide and maintain during the term of the Work and for a period of not less than ten (10) years after Substantial Completion of the entire Work of the Contract, including any warranty periods (or for such additional period as may be required herein) commercial general liability insurance covering Bodily Injury, Property Damage and Personal Injury on a coverage form at least as broad as the most recent edition of Commercial General Liability Coverage Form (CG 00 01) as published by the Insurance Services Office, Inc., covering losses that occur during the policy period regardless of when the claim is made, at limits of at least:

$ 2,000,000	General Aggregate
$ 2,000,000	Products/Completed Operations Aggregate
$ 2,000,000	Personal Injury

$ 1,000,000 Each Occurrence – Property Damage / Bodily Injury

Without limiting the foregoing, subject to policy terms, exclusions, and conditions, coverage provided shall include the following:

a. Premises/operations,
b. Contractor's Protective for Construction Manager's liability arising out of the hire of Subcontractors (Independent Contractors),
c. Aggregate Limits of Insurance Per Project,
d. Contractual Liability,
e. Personal Injury Liability,
f. Property Damage including Completed Operations,
g. Product/Completed Operations (for a period of **ten (10) years** following the Substantial Completion of the entire Work),
h. Explosion, collapse, and underground damage to property of others, (XCU) where such exposures exist,
i. Employees as Additional Insureds,
j. Coverage for cross liability claims between Named Insureds (i.e., "Name Insured vs. Named Insured" Cross Liability Coverage Endorsement if required for coverage and no exclusion for cross liability claims between Named Insureds),
k. Waiver of Subrogation Endorsement, as required by contract, and
l. Thirty (30) days' notice of cancellation or non-renewal to Owner (using ISO Endorsement form CB 02 05 12 04 or equivalent).

The policy shall include endorsement ISO CG2503 (or equivalent) amendment of limits (designated project or premises), in order to extend the policy's general aggregate limits specifically to the Project and to provide for Product/Completed Operations coverage for a period of not less than ten (10) years after the Substantial Completion of the entire Work.

2. **Business Automobile Liability**. Construction Manager shall provide and maintain during the term of the Work, including any warranty periods, business automobile liability insurance on a standard form (approved by the Department of Insurance of the state in which the Project is located) written to cover all owned, hired and non-owned automobiles and motor vehicles, subject to the following minimum limits:

$ __,000,000 Combined Single Limit Each Accident

The Business Automobile Liability policy shall include an endorsement (form TE 0202A for Projects located in Texas or substantial equivalent for Projects located in other jurisdictions) providing thirty (30) days' notice of cancellation to Owner.

3. **Workers' Compensation/Employers' Liability**. Construction Manager shall provide and maintain during the term of the Work, including any warranty periods, statutory Workers' Compensation Insurance Coverage for [as defined in Sec. 402.011(44) of the Texas Labor Code for Projects located in the State of Texas] all of Construction Manager's workers at the site of the Project. In case any work is sublet, the Construction Manager shall require all subcontractors similarly to provide Workers' Compensation insurance for all the latters' employees unless such employees are covered by the protection afforded by the Construction Manager, or, when applicable, Construction Manager has complied with the requirements for joint agreements with independent contractors under Applicable Law [see Sections 406.141 - 406.145, Texas

Labor Code for Projects located in the State of Texas]. U.S.L. and H. shall be provided where such exposure exists. No "alternative" form of coverage will be accepted under any condition ("Occupational Accident and Excess Employers Indemnity Policies" are not acceptable.)

Additionally, Construction Manager shall maintain during the term of the Work Employers' Liability Coverage with limits of $__,000,000 Bodily Injury per Accident/Employee; $__,000,000 Bodily Injury Per Disease/Employee; and $__,000,000 Policy limit by disease.

The Workers' Compensation and Employers Liability policies shall include an endorsement (form WC 420601 for Projects located in Texas or substantial equivalent for Projects located in other jurisdictions) providing thirty (30) days' notice of cancellation / material change to Owner.

NOTE: waiver of subrogation requirement in Section 7, Other Terms and Conditions below.

4. **Umbrella / Excess Liability Insurance**. Construction Manager shall provide and maintain during the term of the Work, including any warranty periods, umbrella excess liability insurance coverage on a policy form acceptable to Owner, providing coverage in excess of the limits specified above (for CGL, Business Automobile Liability and Employers Liability). Such policy shall have the same inception and expiration dates as the underlying liability policies and coverage no less broad than those in the primary policies or program (shall include "Following Form" language to the primary policy). Minimum limits shall be:

$__,000,000	Each Occurrence
$__,000,000	Completed Operations Aggregate
$__,000,000	Annual Aggregate

Without limiting the foregoing, such umbrella / excess coverage shall "follow form" with regard to the primary coverage (i.e., shall provide coverage) to the extent such primary coverage's limits are designated to the Project and such primary coverage provides for an extended period for Products / Completed Operations coverage.

5. Pollution Liability Insurance. Construction Manager shall provide and maintain during the term of the Work, including any warranty periods, Pollution Liability Insurance in an amount not less than $_,000,000 per each occurrence, incident, or claim, and $_,000,000 aggregate. Construction Manager expressly agrees to maintain such Pollution Liability Insurance for a period of not less than two (2) years after the date of the final completion of the construction of the Work that is performed in accordance with the services of this Agreement.

6. Professional Liability Insurance. Construction Manager shall require any Sub-contractors or consultants performing Delegated Design Services to purchase and maintain Professional Liability Insurance in an amount not less than $_,000,000 per each occurrence, incident, or claim, and $_,000,000 aggregate, unless higher amounts are requested by Owner in writing. Such Professional Liability Insurance shall be maintained for a period of not less than two (2) years after the date of the final completion of the construction of the Work that is performed in accordance with the services of this Agreement.

B. Other Terms and Conditions

1. Subcontractors Insurance. Except with Owner's written approval, insurance similar to that required of Construction Manager, other than the Umbrella / Excess Liability, Pollution Liability, and Professional Liability Insurance (except as required below or in the Contract Documents), shall be furnished by all subcontractor(s) to cover their operation performed under any Subcontract (including supply agreements), with the Owner and the other Indemnified Parties identified in the Agreement or Section 3.18 of the General Conditions as Additional Insureds on such policies to the extent that Construction Manager is required to name Owner and such Indemnified Parties as Additional Insureds on Construction Manager's coverage; provided, however, that the minimum limit by subcontractors for General Aggregate under their Commercial General

Liability shall be $1,000,000 on minor subcontracts (under $500,000.000, inclusive of all Change Orders). Construction Manager shall maintain Certificates of Insurance from all subcontractors, enumerating, among other things, the Waivers in favor of, the Owner, as required herein, and make them available to the Owner upon request. The term "subcontractor(s)" shall include subcontractor of any tier.

Each Subcontractor required to furnish professional design services within that Subcontractor's respective scope of Work shall furnish and maintain Professional Liability Insurance with such limits as expressly approved by Owner. Selected Subcontractors as identified jointly by Owner and Construction Manager shall furnish and maintain Pollution Liability Insurance with such limits as expressly approved by Owner.

2. Insurer Requirements, Rating and Forms. Construction Manager's insurance coverage must be written with insurance companies licensed and admitted by the Department of Insurance of the state in which the Project is located to provide such insurance coverage in such state and must be written under either the respective Department of Insurance's standard forms or forms of policies satisfactory to Owner. All such insurers must be reasonably acceptable to Owner and, other than the insurer(s) providing the Workers' Compensation Insurance Coverage, rated no less than A- VII as shown in the most current issue of A.M. Best's Key Rating Guide.

3. Occurrence Basis. All such policies other than Professional Liability shall be written on an Occurrence (not Claims made) basis.

4. Deductibles and Self-Insured Retentions. All deductibles and self-insured retention amounts (except as expressly set forth herein or in any of the Contract Documents) must be acceptable to the Owner. Except as noted otherwise, any and all deductibles in the above-described liability insurance policies shall be assumed by, for the account of, and at the sole risk of the Construction Manager.

5. Additional Insured. The Commercial General Liability, the Umbrella / Excess Liability, the Construction Manager's Pollution Liability, and the Business Automobile Liability policies each must name the Owner, Blue Star, and the other Indemnified Parties identified in the Agreement or Section 3.18 of the General Conditions, as Additional Insureds, using an endorsement form at least as broad as the ISO Additional Insured Endorsement Form CG 2010 11 85 or ISO Additional Insured Endorsement CG 2010 1001 if used with ISO Form 2037 1001 (or their combined equivalent). It is the intent of the parties to this Contract that this Additional Insured status shall include, without limitation, coverage for completed operations and for the Owner's negligence (but only to the extent allowed by Applicable Law, including Chapter 151, Texas Insurance Code, for Projects located in Texas).

6. Primary / Non-Contributing Liability. All liability policies required to be furnished and maintained by Construction Manager shall be primary insurance to any other insurance that may be available to Owner and the other Indemnified Parties identified in the Agreement or Section 3.18 of the General Conditions. It is the intent of the parties to this Contract that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Owner and such other Indemnified Parties, with Owner's and such other Indemnified Parties' insurance being excess, secondary, and non-contributing.

7. Waivers of Subrogation. Waivers of Subrogation shall be provided in favor of the Owner and the other Indemnified Parties identified in the Agreement or Section 3.18 of the General Conditions with regard to Commercial General Liability, the Umbrella / Excess Liability, the Construction Manager's Pollution Liability, Business Automobile Liability, and Workers' Compensation/Employers policies required to be furnished and maintained by Construction Manager.

Without limiting the foregoing, the Workers' Compensation and Employers Liability policies shall include an endorsement (form WC 420304 for Projects located in Texas or substantial equivalent for Projects located in other jurisdictions) waiving subrogation in favor of Owner

8. Evidence of Insurance. Before commencing performance of the Work, the Construction Manager (and those subcontractors requested by Owner) must furnish to Owner certificates of insurance for the coverage required hereunder (on ACORD form 28 for Builders Risk insurance, if provided by Construction Manager, and on ACORD form 25 for liability insurance) or, if requested by Owner, copies of such insurance policies evidencing the terms and conditions required hereunder.

New certificates of Insurance shall be provided to Owner prior to the current certificate(s) coverage termination date if prior to completion of the Work. Lapsed coverage of insurance required by the Agreement is an act of default under the Agreement. Proof of insurance required hereunder must clearly set forth:

a. Insurance coverage as required herein (including all endorsements providing coverage).

b. The effective expiration dates of policies.

c. 30 days' prior written notice to the Owner of cancellation or non-renewal of policy.

d. A waiver of subrogation endorsement in the policies as required herein.

e. Any deductible and/or self-insured retention.

f. Any exclusions to the policy (clearly identifying any endorsements excluding coverages) which are not part of the required standard form of policy.

g. Owner and the other Indemnified Parties named as Additional Insureds on all liability policies required hereunder by Owner.

Upon Owner's request, Construction Manager shall provide Owner a certified copy of the Construction Manager's actual insurance policy thereof, along with endorsements.

9. Notice of Cancellation. With regard to all coverages Construction Manager is required to maintain hereunder, Construction Manager shall be obligated to notify the Owner in writing no later than thirty (30) days prior to the cancellation of or any reduction or any other material change in coverage or intent not to renew coverage.

10. Additional Required Insurance. Owner may elect at any time during the term of this Agreement to require Construction Manager to procure and maintain other or additional insurance. Notice of such election shall be given at least sixty (60) days prior to the effective date of the required modifications. Any additional costs incurred by these parties in securing insurance shall be reimbursed by Owner as a part of the Cost of the Work, and the Guaranteed Maximum Price shall be revised by Change Orders to be increased by the amount of such additional reimbursement.

11. Construction Manager Obligations. Construction Manager shall not violate or knowingly permit to be violated by itself or any of its subcontractors any conditions of the policy of insurance provided by Construction Manager under the terms of this Agreement and shall at all times satisfy the requirements of the insurance companies issuing them. All requirements imposed by the policies referred to above, and to be performed by Construction Manager shall likewise be imposed upon, assumed and performed by each of the subcontractors. Construction Manager and each subcontractor shall execute with their subcontractors a written agreement, which shall include all such requirements.

12. Coverages. The coverages referred to above are set forth in full in the respective policy forms, and the foregoing description of such policies are not intended to be complete, or to alter or amend any provisions of the actual policies and in matters, if any, in which the said description may be conflicting with such instruments, the provision of the actual policies of insurance shall govern.

13. No Limitation On Liability. The amount and types of insurance coverage required to be provided by Construction Manager herein, including any limitation on Construction Manager's obligation to include Owner and related parties as Additional Insureds on Construction Manager's liability policies, shall not be construed

to be a limitation of the liability on the part of the Construction Manager or any of its Subcontractors.

III. SURETY REQUIREMENTS

A. Construction Manager's Bonds.

1. **CONSTRUCTION MANAGER SHALL FURNISH A PAYMENT BOND AND A PERFORMANCE BOND MEETING ALL STATUTORY REQUIREMENTS FOR SUCH BONDS [INCLUDING CHAPTER 2253, TEXAS GOVERNMENT CODE], BOTH IN FORM AND SUBSTANCE SATISFACTORY TO THE OWNER AND IN COMPLIANCE WITH THE SPECIFIC REQUIREMENTS STATED BELOW.**

2. The Construction Manager shall deliver the required Bonds to the Owner after the execution of the first Work Authorization Amendment or GMP Amendment, in the penal amount of the Contract Sum (Guaranteed Maximum Price) for the Work covered by such signed document.

3. The cost of the premiums for such bonds shall be included in the Cost of the Work and shall be reimbursable to the Construction Manager only in the event that such bonds fully comply with Applicable Law and all the requirements and conditions of the Agreement, including these requirements set forth in the Agreement and the applicable provisions of the General Conditions (A201 as modified by the parties).

4. Construction Manager shall keep the surety issuing the performance bond and payment bond noted above informed of the progress of the Work, and, where necessary, obtain the Surety's consent to and waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for final payment; and (4) any other material required by the Surety. Owner may, in the Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

5. All Bonds shall be originals.

6. All surety bonds required or authorized to be furnished under the Agreement, including, but not limited to, the payment and performance bonds noted above, shall be executed by a responsible corporate surety (through an agent licensed by the Texas Department of Insurance and resident in the state of Texas) holding a current certificate of authority from the United States Department of Treasury to issue bonds to the federal government ("Treasury Listed") and duly licensed and authorized by the Texas Department of Insurance to issue surety bonds in Texas or as otherwise expressly permitted by Applicable Law. The Construction Manager shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address and telephone number of a contact person for the Surety shall be provided.

7. Without waiving or limiting the foregoing, the following provisions shall apply to the payment and performance bonds noted above. Construction Manager shall furnish its Surety with a copy of these requirements and, upon request of the Owner, shall obtain a written acknowledgment from the Surety or an endorsement or rider to the bonds from the Surety acknowledging that Surety has agreed to be bound to the requirements hereof, including, without limitation, the following:

   By furnishing the bonds required by the Contract Documents, the Surety expressly agrees that:

   (1) it consents to and waives notice of any extension of time and of any addition, alteration, omission, change, or other modification of the Contract Documents which,

singularly or in the aggregate, does not increase the Contract Sum (Guaranteed Maximum Price) in excess of twenty-five percent (25%);

(2) except to the extent of increases in the Contract Sum (Guaranteed Maximum Price) in excess of the percentage set forth immediately above, any such addition, alteration, change, or other modification of the Contract Documents, or a forbearance on the party of either the Owner or the Construction Manager to the other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived;

(3) it is obligated under the Performance Bond and the Payment Bond to any successor, grantee or assignee of the Owner; and

(4) in the event of an addition, alteration, change, extension, or modification of the Contract Documents without notice to the Surety that does not increase the Contract Sum (GMP) in excess of the percentage set forth above, the Surety shall remain obligated under the bonds for all of the Work performed or to be performed by the Construction Manager, including any Work required by such addition, alteration, change, extension, or modification; provided, however, that the penal sum of the bonds shall not be increased to cover such increase without the Surety's consent. In the event such addition, alteration, change, or modification without notice to the Surety does increase the Contract Sum (GMP) in excess of the percentage set forth above, the Surety's obligations under the bonds shall continue to remain in full force and effect except with regard to such additions, alterations, changes, or modifications which increased the Contract Sum (GMP) in excess of such percentage.

8. Construction Manager shall obtain from the Construction Manager's surety a Dual or Joint Obligee Rider, on a form acceptable to the Owner and Blue Star, naming Owner's Lender (if any) and Blue Star as additional obligees on the bonds.

9. Without limiting the requirement that the payment bond meet the statutory requirements of Chapter 2253 of the Texas Government Code, such bond shall also expressly state that it is intended to meet the requirements of Chapter 53, Texas Property Code, and shall provide for the approval thereof by the Owner and shall be recorded in the Real Property Records of the County in which the improvements to be constructed are located.

10. If at any time during the continuance of the Contract, the Surety of the Construction Manager's Bonds becomes insolvent or financially inadequate in the opinion of Owner, the Owner shall have the right to require additional and sufficient sureties which the Construction Manager shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, all payment or money due to the Construction Manager may be withheld until Construction Manager provides additional surety.

* * * * * * *

B. <u>Subcontractors' Bonds.</u>

To the extent that premium costs for payment and performance bonds furnished by Construction Manager's subcontractors are expressly reimbursable under Article 7 of the Agreement as Cost of the Work, such bonds shall be in form and substance satisfactory to the Owner and furnished prior to the commencement of construction of the Work of the respective subcontract under the Contract Documents.

1. For each subcontractor bond, Construction Manager shall obtain from each such subcontractor

and the subcontractor's surety a Dual or Multiple Obligee Rider, on a form acceptable to the Owner, naming as additional obligees the Owner's Lender (if any) and Blue Star.

2. Each such surety bond must be executed by a responsible corporate surety acceptable to the Owner, holding a current certificate of authority from the United States Department of Treasury to issue bonds to the federal government ("Treasury Listed"), and duly licensed and authorized to issue surety bonds in the jurisdiction in which the Project is located.

3. Construction Manager may provide Subcontractor Default Insurance as recognized in Section 7.6.1 of the Agreement.

* * * * * * *

EXHIBIT E

CHANGE ORDER PRICING

[See Attached]

EXHIBIT E

CHANGE ORDER PRICING

1. Whenever Change Order proposals to adjust the Guaranteed Maximum Price become necessary, the Owner will have the right to select the method of pricing to be used by the Construction Manager in accordance with the pricing provisions found in this Section. The options for the pricing of the Subcontractors' Work will be (1) Lump Sum Change Order Proposal or (2) Cost of the Work plus Fee Change Order Proposal as defined in the following provisions:

Lump Sum Change Order Proposals. The Construction Manager (through any lower tier subcontractor) will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a reasonably detailed format reasonably satisfactory to the Owner. Consistent with the foregoing, the Owner will require itemized Change Order proposals from the Construction Manager, Subcontractors, and Sub-subcontractors regardless of tier (Downstream Subcontractors). Details to be submitted will include estimates showing materials quantity take-offs, material prices by item, and related labor hour pricing information in such detail as reasonably required by Owner in order to determine how the proposed pricing was computed. Except as otherwise provided herein, such lump sum proposals shall be based upon costs reimbursable as Cost of the Work and subject to the limitations and conditions set forth in Articles 7 and 8 of the Agreement. Notwithstanding the foregoing, agreed reimbursement rates set out in the Agreement are only applicable to the Construction Manager, and agreed reimbursement rates (other than markup as provided in Section 5.1.3 of the Agreement) set out in the respective Subcontract Agreements may be used for pricing for that Subcontractor's Change Order work.

Estimated labor costs shall be based on the actual cost per hour paid by the Construction Manager (for Self Perform Work) and the respective Subcontractors and Downstream Subcontractors for those workers who are reasonably anticipated to perform the Change Order work. Estimated labor hours shall include hours only for those workmen and supervisory personnel directly involved in performing the Change Order work.

Labor burden allowable in Change Orders for Construction Manager's Self Perform Work shall be as set forth in Article 7 of the Agreement. Labor burden allowable in Change Orders for Subcontractors and Downstream Subcontractors shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits actually paid, if the employees are not union employees), and net actual cost to employer for worker's compensation insurance.

Cost of the Work Plus Fee Change Order Proposals. As an alternative to Lump Sum Change Order Proposals, the Owner may elect to have any Change Order work performed on a time and material plus a fee basis. Upon written notice to proceed, the Construction Manager shall perform such authorized extra Work (for Construction Manager's Self Perform Work) or shall cause its Subcontractors (and their Downstream Subcontractors) to perform such authorized extra Work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden (allowable as provided above), actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any separate charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant -- which expenses and costs are recoverable as part of the general conditions mark-up under Section 5.1.3 of the Agreement) plus the approved markup for fee or profit and general conditions costs in an amount not to exceed the percentages as provided in Section 5.1.3 of the Agreement. Owner and Construction Manager may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum.

2. Computing Subcontractor Costs. Any adjustments to Subcontracts shall, except as otherwise agreed in writing by Owner and Construction Manager, be subject to the Change Order Pricing requirements as provided herein or as may be set forth in the respective Subcontract Agreement (which, in the event of a conflict, the terms of the respective Subcontract Agreement shall control provided that Owner has approved such conflicting terms). Except as otherwise expressly agreed by the Owner, any adjustment to Subcontracts with regard to mark-ups for overhead and profit shall be subject to the limitations set forth in Section 5.1.3 of the Agreement. It is understood that the Subcontractor Change Order Pricing Requirements apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts, and/or cost of the work plus fee contracts with or without a guaranteed maximum price. It is further understood that these Change Order Pricing Requirements will apply to all methods of change order pricing specifically including Lump Sum Change Order Proposals, unit price Change Order Proposals (to the extent the parties agree on unit pricing), and Cost of the Work Plus Fee Change Order Proposals.

3. Accurate Change Order Pricing Information. Construction Manager agrees to submit accurate documentation to support any Change Order Proposals or other contract price adjustments in accordance with the terms of the Contract with respect to pricing of Change Orders.

4. Right to Verify Change Order Pricing Information. Construction Manager agrees that any designated Owner's representative will have the right to examine the records of the Construction Manager to verify the accuracy and appropriateness of the documentation used to price Change Order Proposals. Construction Manager shall furnish Owner with copies of all Change Orders issued to Subcontractors.

5. Deductive Change Orders and Net Deductive Changes. The application of the markup percentages authorized in Section 5.1.3 of the Agreement will apply to both additive and deductive Change Orders. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net additive or deductive amount.

6. Change Order Proposal Time and Change Directive. The Construction Manager's proposals for changes in the Guaranteed Maximum Price or the Contract Time shall be submitted promptly but within twenty one (21) calendar days of the Owner's request unless the Owner extends such period of time due to the circumstances involved or Construction Manager, by exercising reasonable diligence, is not able to finalize such proposal within fourteen calendar days. Construction Manager shall contractually require all Subcontractors to respond to requests for pricing in conformance with the pricing requirements herein and time impact information in an accurate, diligent and prompt manner to allow for Construction Managers' compliance with the twenty one day proposal submission requirement. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the Project or costly delay, the Owner may issue a Construction Change Directive to the Construction Manager to proceed with the changes without waiting for the Construction Manager's proposal or for the formal Change Order. The cost or credit and/or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract. In the event that the parties are unable to agree on the amount of the cost or credit of the changed work, the provisions of Section 7.3 of the General Conditions shall apply.

7. No Increase in Construction Manager's Fee. Nothing herein shall entitle the Construction Manager to an adjustment in the Construction Manager's Fee with regard to changes in the Work, except as expressly authorized in Section 5.1.2 of the Agreement.

EXHIBIT D

Architect Contract Form

DRAFT

AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

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

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

CITY OF FRISCO, TEXAS
(see address for notice purposes in **Exhibit B**)

and the Architect:
(Name, address and other information)

«[To be determined.] »« »
(see address for notice purposes in **Exhibit B**)

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

STADIUM TRACT FACILITIES

The Owner and Architect 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.

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

DRAFT

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the information set forth in Sections 1.1 through 1.2 of this Article 1 or in such documents or Exhibits referenced in this Article 1, including the **Project Description** attached hereto as **Exhibit A** and incorporated fully herein, hereinafter referred to collectively as the "**Initial Information**".

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are as set forth in the **Project Description** attached hereto as **Exhibit A**.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

§ 1.4 The Initial Information, together with such material changes subsequently made by the Owner and furnished to the Architect, and such other information with regard to the Owner's requirements for the Project subsequently furnished by the Owner to the Architect shall constitute the **Owner's Program**.

§ 1.5 Owner has retained the services of Blue Star Stadium, Inc. ("Blue Star") as a consultant in connection with the design and construction of the Project. Blue Star also has certain rights arising under this Agreement as further described herein.

§ 1.5.1 Architect shall deliver to Blue Star accurate, complete copies of all notices or written communications given by the Architect to the Owner, including but not limited to all such notices or communications required to be given by the Agreement, prior to or simultaneously with the delivery to the Owner. Notice provisions in the Agreement that are silent with regard to notice to Blue Star shall not be construed to mean that notice is not required to be given to Blue Star, even though specific provisions expressly require notice to Blue Star. No notice required to be

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provided to the Owner under the Agreement shall be effective until and unless also delivered to Blue Star. All meetings, conferences, and consultations between Owner and Architect shall include Blue Star.

§ 1.5.2 It is further understood and agreed that, because of the contractual obligations of Owner and Blue Star relating to the improvements to be constructed hereunder and the financing for construction arising under that certain Master Development Agreement for Dallas Cowboys Facilities and Related Improvements, Blue Star shall be a third-party beneficiary of this Agreement. Architect acknowledges and agrees that, notwithstanding the third party beneficiary rights of Blue Star arising under this Agreement, Architect is not contracting with Blue Star with regard to the professional services hereunder and that Architect shall have no contractual cause of action against Blue Star arising from this Agreement, except as may otherwise be expressly agreed, in writing, between the Architect and Blue Star.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Articles 2, 3 and 12 and the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C**. Architect agrees and represents that it shall perform such services required hereunder in accordance with the terms of this Agreement and, in connection therewith, shall render its professional opinions and advice and exercise its professional judgment commensurate with the applicable standards of care and practice for licensed architects performing similar services on projects of like size, scope and complexity located in the metropolitan area and county where the Project is located (the "Standard of Care"). If changes in the schedule or scope of work are requested by the Owner or required as a result of circumstances beyond the control of the Owner that would require the Architect to perform with a lesser standard of care, it is solely the responsibility of the Architect to notify the Owner in advance in writing that such deviation will be required and to provide to the Owner the specific basis for that opinion. The Architect shall not deviate to a lesser standard of care in the absence of an express written authorization by the Owner. This paragraph shall not be construed to authorize performance by the Architect at a standard of care that is less than that which is required by law or which is expected of Architects practicing under similar circumstances and conditions.

§ 2.2 The Architect shall perform its services as expeditiously as is consistent with the Standard of Care and the orderly progress of the Project and consistent with the time parameters as set forth in this Agreement (including but not limited to **Exhibit C**).

§ 2.2.1 Architect's services shall be coordinated with those of other design professionals or consultants, if any, retained by the Owner for the Project and identified in writing to the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Project and the services of the Architect and such other design professionals or consultants.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Such representative shall not be changed except upon written notice furnished to Owner.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the insurance coverages for the duration of this Agreement as required in the **Insurance Requirements** attached hereto as **Exhibit D** and incorporated fully herein.

§ 2.6 Architect shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Architect and for their compliance with all applicable codes, ordinances, regulations, laws, and statutes (such requirements being referred to herein collectively as "Applicable Law") and shall make such revisions and modifications to such plans, and drawings as may be necessary to comply with the permitting and other regulatory and legal requirements of the jurisdiction of the Project. Architect shall take such action with reasonable promptness as to cause no delay in the Project or in the activities of the Owner, the Contractor or other contractors of the Owner. All documents shall bear all indicators of completeness of the work (such as professional seals) required by the Texas Board of Architectural Examiners and/or the Texas Engineering Practice Act, as applicable. The Architect is required to design to the most stringent prevailing code having jurisdiction over the project.

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§ 2.7 Architect shall upon request certify to Owner and any lender that, in the Architect's professional opinion, all drawings and specifications prepared by or through the Architect conform to Applicable Law, including all applicable governmental regulations, statutes, rules and ordinances, and that to the best of its knowledge the Project when completed (if built in accordance with the Construction Documents) will be in accordance therewith. Architect expressly agrees to produce any available documentation, or otherwise reasonably satisfy the requirements of any public agency, quasi-public agency, regulatory agency, financing entity or other party with jurisdiction over the Project or its financing to establish such compliance.

§ 2.8 Architect has submitted and Owner has approved a project organizational chart identifying all of Architect's personnel who will be performing services related to this Project and their responsibilities in connection with this Project. If at any time after entering into this Agreement, Owner has any reasonable objection to any such person or entity, Architect shall promptly propose substitutes to whom the Owner has no reasonable objection. Except upon the request of the Owner, the Architect shall retain each person approved by the Owner in his (or her) respective position for the duration of the Project. Should circumstances beyond the control of the Architect result in changes to Architect's personnel, the Architect shall submit the credentials of Architect's proposed replacement team member for the Owner's approval, which shall not be unreasonably withheld. The services provided by the Architect are deemed to be personal services. Termination by the Owner as a result of an unapproved change in the project team shall be deemed a termination for cause.

§ 2.9 All consultants retained by the Architect not previously approved by the Owner are subject to the Owner's approval on the basis of qualifications and personnel committed to the Project which approval shall not be unreasonably withheld. In addition, all substitutions of consultants by the Architect are subject to the Owner's approval, which approval shall not be unreasonably withheld.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and in the **Architect's Supplemental Scope of Services Statement** attached hereto as **Exhibit C** and include usual and customary structural, mechanical, and electrical engineering services, as well as any other services that are customarily or necessarily implied in order to complete the work that is described in the this Agreement and any attachments hereto. Services not set forth or required in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants, provided such reliance is reasonable. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include adequate allowances for periods of time required for the Owner's and Contractor's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution which constitutes a material change to the requirements of the Construction Documents prepared by the Architect and which are made without the Architect's knowledge. If a change or substitution is proposed by the Owner or the Contractor and the Architect has an objection to such change or substitution, the Architect shall expressly object in writing to such proposed change or substitution, setting forth the specific basis of its objections to such proposed change or substitution. If the Owner then directs the Architect to incorporate such proposed change or substitution into the Construction Documents or directs or otherwise authorizes the Contractor to perform such change or substitution without a

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revision in the Construction Documents over the Architect's objection, the Owner agrees to accept these risks, and the costs and consequences associated with them.

§ 3.1.5 The Architect shall, at such times required by Applicable Law and with prior notice to Owner, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 The Architect shall recommend to the Owner all appropriate investigations, surveys, tests, analyses and reports to be obtained as may be necessary for the proper execution of Architect's services.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the Owner's Program and other information furnished by the Owner, and shall review Applicable Law relating or applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's Program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other information concerning the Project furnished by Owner, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's Program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's Program, schedule and budget for the Cost of the Work.

§ 3.2.6 If identified as a Basic Service in the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C**, the Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's written approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect

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shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 If identified as a Basic Service in the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C**, the Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work (if Cost estimating is identified as a Basic Service in the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C**), and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's written approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. Without limiting the foregoing, Construction Drawings and specifications submitted by the Architect to Owner for approval shall be sufficiently complete and unambiguous and in compliance with all Applicable Law, except to the extent expressly and specifically otherwise stated in detail in writing by Architect at the time of such submission.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; and (2) any Supplementary Conditions of the Contract for Construction as expressly authorized in writing by the Owner. The Architect shall also compile a project manual that includes the General Conditions of the Contract for Construction as furnished by the Owner and Specifications prepared by the Architect consistent with the General Conditions of the Contract for Construction as furnished by the Owner.

§ 3.4.4 If identified as a Basic Service in the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C**, the Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work (if Cost estimating is identified as a Basic Service in the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C**), take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 COMPETITIVE PROCUREMENT PHASE SERVICES

§ 3.5.1 Owner currently intends to select a general contractor or construction manager at risk (referred to herein as the "Contractor" whether a general contractor or construction manager at risk) for certain preconstruction services, as well as construction services, by means of competitive selection in compliance with Applicable Law. The selection and retention of the Contractor will likely occur prior to commencement of the Construction Documents Phase.

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§ 3.5.2 Bidding or Competitive Procurement Documents shall consist of bidding / proposal requirements and proposed Contract Documents. Upon Owner's request and as a Basic Service, the Architect shall assist the Owner in selecting the Contractor or Construction Manager for the Project pursuant to applicable competitive procurement requirements by:

.1 assisting the Owner in the preparation of Bidding or Competitive Procurement Documents for distribution to prospective bidders or proposers;

.2 distributing the Bidding or Competitive Procurement Documents to prospective bidders or proposers, requesting their return upon completion of the competitive selection process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders or proposers;

.3 organizing and conducting a pre-bid conference for prospective bidders or proposers;

.4 assisting in the preparation of responses to questions from prospective bidders or proposers and providing clarifications and interpretations of the Bidding or Competitive Procurement Documents to all prospective bidders or proposers in the form of addenda;

.5 assisting the Owner in organizing and conducting the opening of the bids or responses to competitive proposals, and subsequently documenting and distributing the bidding or competitive selection results, as directed by the Owner;

.6 organizing and participating in selection interviews with prospective contractors submitting proposals; and

.7 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3 The Architect shall consider, as Basic Services, reasonable requests for substitutions, if the Bidding or Competitive Procurement Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders or proposers.

§ 3.5.4 Further, once Contractor has been retained by the Owner, the Architect shall cooperate with the Contractor in connection with the Contractor's performance of its services to the Owner, shall be responsive to any requests from the Contractor for information to which Contractor is entitled under the Contract Documents, and shall timely furnish all information relating to the Project or the Construction Documents prepared by the Architect as authorized or directed by the Owner.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the Owner's standard form of the AIA Document A201™–2007, General Conditions of the Contract for Construction, a copy of which is attached hereto for reference purposes as **Exhibit G**. If the Owner and Contractor modify AIA Document A201–2007 as attached hereto, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall not have authority to act on behalf of the Owner except to the extent expressly provided in this Agreement or as expressly authorized in writing by Owner. The Architect shall 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, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

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§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3 or the **Architect's Supplemental Scope of Services Statement** attached hereto as **Exhibit C**, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, 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. The Architect shall provide Owner with written reports of such reviews. However, except as otherwise agreed in the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C**., the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Owner. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect which are required by the Owner or the Contract Documents shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings..

§ 3.6.2.5 *[Intentionally deleted.]*

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect shall be responsible for determining what aspects of the Work shall be the subject of shop drawings and submittals and for timely communicating such requirements to Owner and Contractor. The

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Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 Upon the Owner's request, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work. Unless expressly excluded as Basic Services by the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C**, the Architect shall prepare reproducible record drawings showing significant changes in the work made during construction based on marked-up drawings and other data furnished by the Owner to the Architect and on issued Addenda, Change Orders, and Construction Change Directives.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance and make recommendations regarding any warranty work or any other work needed in order to correct non-conforming work.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services are those services not included in Basic Services but may be required for the Project and, except as otherwise expressly provided below, authorized in writing by the Owner. The Architect shall provide such Additional Services only as expressly provided below or as authorized in writing by the Owner, and the Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Additional Services anticipated by the Owner (and subject to the express written authorization by the Owner) are as set out below or as expressly identified as Additional Services in the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C.**

None, except as provided in **Exhibit C**.

§ 4.3 Additional Services may be provided after execution of this Agreement and as authorized in writing by the Owner, without invalidating the Agreement. Except for services required due, in whole or in part, to the fault of the Architect or its sub-consultants, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner in writing with reasonable promptness which notice shall include an explanation of the facts and circumstances giving rise to the need and shall state whether Architect will be charging for such Additional Services and, if so, shall include a reasonably accurate estimated cost to perform such Additional Services. Except to the extent such services are required hereunder as Basic Services, the Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

.1 Services in excess of Basic Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services in excess of Basic Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors; provided, however, that no decision shall be considered untimely unless the Owner fails to comply with the schedule, if any, agreed by the parties or the Architect notifies the Owner in writing (or in a documented Project meeting in which the Owner is present) of a specific need for a particular decision by a specified date reasonably in advance of that date and such time period is reasonable based upon all circumstances;

.5 Preparation for, and attendance at, a public presentation, meeting or hearing;

.6 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.7 Consultation concerning replacement of Work resulting from fire or other cause during construction.

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§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services and shall notify the Owner in writing of the Additional Services to be performed with reasonable promptness prior to the performance of such Additional Services. Such notice shall state whether Architect will be charging for such Additional Services and, if so, shall include a reasonably accurate estimated cost to perform such Additional Services, and shall explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;

.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a reasonably careful study (based upon the Contractor's standard of care as required under the Contract Documents) and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing an excessive number of Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an excessive number of substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

.5 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 *[Intentionally deleted.]*

§ 4.3.4 If the services covered by this Agreement have not been completed within _____ (____) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement and upon the Architect's timely written request, the Owner shall provide in a timely manner such supplemental information to the Owner's Program regarding requirements for and limitations on the Project as reasonably required for the Architect to perform its obligations hereunder.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish, upon timely written request of the Architect, surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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§ 5.5 The Owner shall furnish, upon timely written request of the Architect, services of geotechnical engineers when such services are reasonably required by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants, if any, with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 Upon Architect's timely written notice to Owner of the need for Owner to arrange for tests, inspections and reports required by law or the Contract Documents, Owner shall furnish or cause to be furnished such tests, inspections, and reports, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner has actual knowledge of any material fault or defect in the Project, including material errors, omissions or inconsistencies in the Architect's Instruments of Service. This, however, shall not impose an independent duty on the Owner to review the accuracy or completeness of the Architect's Instruments of Service.

§ 5.10 The Owner shall promptly notify the Architect of any communications with the Contractor that may affect the Architect's services.

§ 5.11 Upon the Architect's request, the Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.13 Owner hereby reserves the right to perform reviews, inspections, and acceptance of the Work and any and all reviews, inspections and acceptance performed by the Owner or by others for the Owner shall be for the sole benefit of the Owner. The presence or absence of an Owner representative or inspector does not relieve the Architect from any contract requirement, nor is the representative or inspector authorized to change any term or condition of the drawings and specification without the Owner's written authorization.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Except as may otherwise be provided by the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C**, any review of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work prepared by the Owner is solely for the Architect's guidance in the Architect's preparation of the Construction Documents. Accordingly, unless otherwise provided by the **Architect's Supplemental Scope of Services Statement**, if any, attached hereto as **Exhibit C**, the Architect cannot and does not warrant or represent

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that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work (if such Cost estimating is required hereunder), the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests cost estimating services not required as a Basic Service, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- **.1** give written approval of an increase in the budget for the Cost of the Work;
- **.2** authorize rebidding or renegotiating of the Project within a reasonable time;
- **.3** terminate in accordance with Section 9.5;
- **.4** in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- **.5** implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service (hereinafter referred to as "Instruments of Service") and all rights therein shall be governed by and subject to the terms set forth in **Exhibit F** (**Instruments of Service: Conveyance of Rights to Owner**) attached hereto and incorporated fully herein.

§ 7.2 The Architect and the Owner agree that in transmitting Instruments of Service, or any other information, the transmitting party or the party to whom the transmission is directed is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 *[Intentionally deleted.* See **Exhibit F** attached hereto and incorporated fully herein.]

§ 7.3 *[Intentionally deleted.* See **Exhibit F** attached hereto and incorporated fully herein.]

§ 7.3.1 *[Intentionally deleted.* See **Exhibit F** attached hereto and incorporated fully herein.]

§ 7.4 *[Intentionally deleted.* See **Exhibit F** attached hereto and incorporated fully herein.]

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ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by Applicable Law. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1. Notwithstanding the foregoing, causes of action by the Owner against the Architect pertaining to acts or failures to act in connection with the professional services rendered or to be rendered hereunder shall be deemed to have accrued and the applicable statute of limitations shall commence to run either on the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion of which the Owner was aware as a result of notice by the Architect, or upon the Owner's discovery of damages to the Owner or the Project resulting from the act or failure to act by the Architect, whichever is later.

§ 8.1.2 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent of the actual recovery of the proceeds of such insurance. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 *[Intentionally deleted.]*

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as provided herein.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement or as otherwise agreed by the parties. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for 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.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the Dallas-Fort Worth metropolitan area, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.3 BINDING DISPUTE RESOLUTION

§ 8.3.1 If the parties do not resolve a dispute through mediation pursuant to Section 8.2, the method of binding dispute resolution shall be the following: litigation in a state District Court located in the County in which the Project is located or in a United States District Court of the Northern District of Texas.

§ 8.3.2 The provisions regarding dispute resolution shall survive completion and termination of the Contract.

§ 8.3.3 Any consolidation or joinder of litigation arising out of this Agreement shall be subject to the applicable rules of procedure in the respective court with regard to consolidation and joinder.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner after the Owner's material default before suspending services provided the Owner has not substantially cured such default. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Upon Owner's cure of such default, Architect shall promptly

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resume the performance of its services; provided, however, before resuming services, the Architect shall be paid all sums due prior to suspension and any reasonable and directly related actual expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted consistent with the provisions for the compensation of the Architect under this Agreement.

§ 9.2 If the Owner suspends the Project for more than 30 consecutive days for reasons other than the fault of the Architect, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted consistent with the provisions for the compensation of the Architect under this Agreement.

§ 9.3 If the Owner suspends the Project for more than 120 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination for any reason (other than the fault of the Architect), the Architect's sole recovery from the Owner shall be compensation as authorized by this Agreement for services performed prior to termination, together with Reimbursable Expenses then due, including actual, direct expenses reasonably and necessarily incurred by the Architect in connection with the termination of the Agreement. In the event of a termination by the Owner for cause (as a result of the breach of the Agreement by the Architect), the Architect's compensation shall not exceed the compensation authorized by this Agreement for services performed prior to termination, together with Reimbursable Expenses incurred in the performance of those services, less any offsets or deductions for any damage or loss incurred by Owner for which the Architect is responsible under the terms of this Agreement or Applicable Law.

§ 9.7 *[Intentionally deleted.]*

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located and the terms of this Agreement shall be interpreted to comply with the laws of such jurisdiction. This Agreement is fully performable in the county in which the Project is located and venue for all suits arising from this Agreement or the Project shall be such county.

§ 10.2 Except as otherwise expressly provided in this Agreement, terms in this Agreement shall have the same meaning as those in the Owner's Standard Form of AIA Document A201–2007, General Conditions of the Contract for Construction (see **Exhibit I**).

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Architect shall not assign this Agreement, not any monies due or to become due to it hereunder without the prior written consent of the Owner. Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Owner may also assign this Agreement and/or the rights arising hereunder to any specially created entity owned or controlled by the Owner, provided such entity is or becomes the owner of the property for which the services are to be provided pursuant to this Agreement, or to Blue Star. Owner may assign this Agreement to any other entity upon Architect's written consent, such consent not to be unreasonably withheld. In the event of the Owner's assignment of this Agreement or any rights thereunder, Architect shall execute all consents reasonably required to facilitate such assignment.

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§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement. However, the Owner may require and the Architect shall execute, as part of its Basic Services hereunder, any certificates or certifications customarily, commonly, or reasonably required on projects of this type.

§ 10.5 Architect acknowledges that it is acting as an independent contractor, that it is solely responsible for its actions or inactions and that no document, action or assertion shall be construed to create an employment or agency relationship between Owner and Architect. Architect is not authorized to enter into contracts or agreements on behalf of Owner or to otherwise create obligations of Owner to third parties. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site -- except to the extent that such hazardous substances were introduced to the Project site by Architect or as a part of or derived or resulting from materials or other items specified by the Architect's Plans, Drawings, Specifications, or other documents (in which case the Architect shall have such responsibility).

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary.

§ 10.8 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

§ 10.9 Architect is solely responsible for the work, direction and compensation of its consultants, employees or any other party Architect shall retain or be legally responsible for; and neither Owner, Owner's Representative nor Owner's Consultants will incur any liability by virtue of any act, omission, negligence or obligation of Architect, consultant or any other party for whom Architect shall be legally responsible.

§ 10.10 If any action at law or in equity, including an arbitration proceeding, is necessary to enforce or interpret the terms of this Agreement or to recover damages for breach of contract or negligence arising out of or in connection with the performance of the services hereunder, the Court or the arbitrator(s), as applicable, shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in such proceeding.

§ 10.11 To the fullest extent permitted by law (and no further), the Architect hereby indemnifies and holds harmless Owner, Owner's construction lender(s) (if any) providing financing for the Project, and Blue Star, and their directors, officers, parents, subsidiaries, affiliates, joint venturers, partners, employees, agents and representatives (hereinafter referred to individually as an "Indemnified Party" and collectively as the "Indemnified Parties") from and against all claims, damages, liabilities, losses and expenses, including but not limited to reasonable attorney's fees and costs incurred by Owner and/or the other Indemnified Parties in the defense of claims or the enforcement of the Architect's indemnity obligations hereunder, to the extent caused by:

.a the violation of any ordinance, regulation, statute, or other legal requirement by Architect or any of its Subconsultants, or any of their agents and employees, as to the performance of the Agreement;

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.b any negligent act or omission or any intentional act or omission in violation of Architect's standard of care, by the Architect, a sub-consultant or anyone directly or indirectly employed by the Architect or anyone for whose acts the Architect may be liable; or

.c the performance of the services under this Agreement, 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, including loss of use resulting therefrom.

§ 10.11.1 With regard to the indemnity obligations arising under Section 10.11, such obligations shall arise ***regardless of whether or not such claim, damage, loss or expense is caused in part by the concurrent or partial negligence of an Indemnified Party; however, Architect shall not be liable to the Owner or another Indemnified Party for that portion of any damages, losses, or expenses incurred by the Indemnified Parties to the extent of their negligence or the negligence of their employees, agents, or contractors (or their subcontractors of any tier)***.

§ 10.11.2 Notwithstanding the foregoing, Architect's obligation to indemnify the Indemnified Parties for attorney's fees and costs shall extend to those reasonable attorney's fees and costs incurred by the Indemnified Parties in the defense of claims asserted against the Indemnified Parties which arise from the alleged acts or omissions described in Section 10.11 .a through .c above. However, in the event that the Owner or any other Indemnified Party is found, by final judgment or arbitration award, to be negligent or at fault in whole or in part, the indemnity and hold harmless obligation of the Architect with regard to attorney's fees and litigation or arbitration costs and expenses incurred by such Indemnified Party in defense of such claim shall be reduced by the percentage of negligence or fault of the Indemnified Party and/or their agents or employees.

§ 10.11.3 The indemnification obligations assumed under this Section 10.11 shall not be limited by a limitation on the amount or type of damages which might otherwise be recoverable by Owner against the Architect.

§ 10.11.4 The Architect's indemnity and defense obligations shall survive the termination of this Agreement and completion of the services required hereunder.

§ 10.12 The following documents are attached hereto and, except for Exhibit I, are incorporated fully herein:

Exhibit A: Project Description
Exhibit B: List of Designated Representatives and Contact Persons
Exhibit C: Architect's Supplemental Scope of Services Statement
Exhibit D: Insurance Requirements
Exhibit E: Payment Terms and Invoicing Requirements
Exhibit F: Instruments of Service: Conveyance of Rights to Owner
Exhibit G: Owner's Standard Form of General Conditions (AIA A201) (attached for reference purposes)

§ 10.13 This Agreement shall not be amended except by written agreement of the parties, duly executed by an authorized representative of each party.

§ 10.14 To the fullest extent permitted by law, Architect or any person or entity acting through Architect hereby waives and releases any right to file, perfect or enforce a mechanic's lien against the Project or the real property upon which the Project is located for services performed under this Agreement. Architect shall, upon request, deliver to Owner contemporaneously with any payment to Architect, recordable partial waivers of lien for any partial payments and a recordable final waiver of lien for the final payment.

§ 10.15 All notices shall be in writing and shall be delivered personally, by Federal Express, or by registered or certified mail return receipt requested. Notices to the respective parties shall be delivered as follows:

See **Exhibit B** attached hereto and incorporated fully herein.

Notice shall be effective on the date of delivery, or if delivery is refused, on the date of attempted delivery. Either party may change its address for notice by notifying the other party in accordance with this Section.

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§ 10.16 No term or condition of this Agreement may be waived at any time by the party or parties entitled to the benefit thereof except in a writing signed by such party and specifically addressing such waiver. No waiver of any default or breach hereunder shall be construed as a waiver of any subsequent breach.

§ 10.17 In the event any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations hereunder shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

§ 10.18 CERTIFICATE OF MERIT / TEXAS PROJECTS: For purposes of the Owner submitting a dispute or claim to litigation or arbitration, the Architect expressly waives the requirement under Chapter 150, Texas Civil Practices & Remedies Code, that Owner file a Certificate of Merit with the pleading initiating an action against the Architect based upon an alleged negligent act or omission.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

> See **Payment Terms and Invoicing Requirements** attached hereto as **Exhibit E** and incorporated fully herein.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

> See **Payment Terms and Invoicing Requirements** attached hereto as **Exhibit E** and incorporated fully herein.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

> Hourly fees as set forth in the **Payment Terms and Invoicing Requirements** attached hereto as **Exhibit E** or as otherwise agreed with Owner in writing, subject to any maximum amount set forth in Owner's authorization to perform such services. Hourly fees for Additional Services performed by subconsultants shall not exceed those hourly fees approved by Owner.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect, or as otherwise stated below:

> See **Payment Terms and Invoicing Requirements** attached hereto as **Exhibit E** and incorporated fully herein.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

> See **Payment Terms and Invoicing Requirements** attached hereto as **Exhibit E** and incorporated fully herein.

§ 11.6 *[Intentionally deleted.]*

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

> See **Payment Terms and Invoicing Requirements** attached hereto as **Exhibit E** and incorporated fully herein.

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

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See **Payment Terms and Invoicing Requirements** attached hereto as **Exhibit E** and incorporated fully herein.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE
[Intentionally deleted.]

§ 11.10 PAYMENTS TO THE ARCHITECT
§ 11.10.1 An initial payment shall not be required.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. All invoices shall be submitted in such form and subject to such requirements as set forth in **Payment Terms and Invoicing Requirements** attached hereto as **Exhibit E** and incorporated fully herein.

§ 11.10.3 Should Owner be damaged by Architect's breach of contract or an error or negligent omission which constitutes a breach of Architect's applicable Standard of Care, Owner may, without waiving any other legal or equitable right, withhold from Architect's compensation an amount commensurate with Owner's damages suffered as a result of Architect's breach of contract or error or negligent omission.

§ 11.10.4 Architect shall maintain, and shall require its consultants to maintain complete and accurate records (in accordance with generally accepted accounting principles consistently applied and maintained) of costs and expenses incurred by it and the hours worked on a time-card basis by their respective personnel. Upon reasonable notice from Owner or Owner's Representative, these records shall be available at Architect's or the respective consultant's office during business hours for audit and copying by Owner at Owner's expense. Architect shall retain these records for six years after its receipt of final payment.

§ 11.10.5 The Architect shall provide payment to each sub-consultant and supplier within ten (10) calendar days after receiving payment from the Owner for amounts previously invoiced for services performed or materials furnished under this Agreement. All subcontract or sub-consulting agreements shall contain payment provisions requiring payments to lower-tier subcontractors or sub-consultants within ten (10) calendar days after the first-tier subcontractor or sub-consultant receives payment from the Architect. Interest on late payments is subject to the provisions of the Chapter 2251, Texas Government Code, regarding payments to subcontractors.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:

Note: Statement of Jurisdiction. The Texas Board of Architectural Examiners (TBAE) has jurisdiction over complaints regarding the professional practice of persons registered as architects in Texas. For more information, contact TBAE at P. O. Box 12337, Austin, Texas 78711-2337, (512) 305-9000, or visit their website at www.tbae.state.tx.us.

ARTICLE 13 SCOPE OF THE AGREEMENT
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect, as modified herein, with the Exhibits attached hereto.

.2 Other documents:
none.

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

OWNER	ARCHITECT
(Signature)	*(Signature)*
(Printed name and title)	*(Printed name and title)*

DRAFT

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EXHIBITS TO

AGREEMENT [AIA / B101]

BETWEEN

CITY OF FRISCO, TEXAS

[OWNER]

and

_____

[ARCHITECT]

Project: STADIUM TRACT FACILITIES

OWNER/ARCHITECT AGREEMENT

EXHIBIT A

Project Description

[See Attached]

OWNER/ARCHITECT AGREEMENT

EXHIBIT B

List of Designated Representatives and Contact Persons

Owner's Designated Representative:

_____

An additional Owner's Designated Representative may be added and the Owner's Designated Representative may be changed, effective only upon written notice to the Architect executed by _____.

Without limiting any other provisions of the Contract Documents, all notices of claims by Architect or its subconsultants (of any tier) against the Owner, notices of default on the part of the Owner, notices demanding action or requiring cure by the Owner, or notices of termination or required as a condition of termination shall not be effective until and unless received by Owner's Designated Representative, with a copy contemporaneously sent to and received by the following:

_____

No waiver, consent or modification of the terms of the Agreement or Architect's obligations to perform thereunder or any other approval shall be effective or enforceable against Owner except to the extent such waiver, consent, modification or approval is in writing and duly executed by Owner's Designated Representative.

Blue Star's Designated Representative:

_____

Except as otherwise directed in writing by Owner, Architect shall furnish to Blue Star copies of all notices and written communications by or through Architect to Owner, contemporaneously with such notice to Owner. Architect shall cooperate fully with Blue Star with regard to the services it has been retained to furnish to Owner and shall provide Blue Star the same level of access to such information in the possession of Architect in connection with the Agreement or the Project to which Owner would be entitled under the Agreement or pursuant to Applicable Law. Notices to Blue Star shall be sent to Blue Star's Designated Representative at the address above.

Architect's Designated Representative:

_____

All notices and other written communications to be provided to the Architect under the terms of the Contract shall be sent to the Architect's Designated Representative at the address above.

OWNER/ARCHITECT AGREEMENT

EXHIBIT C

Architect's Supplemental Scope of Services Statement

[See Attached]

OWNER / ARCHITECT AGREEMENT
EXHIBIT D

Insurance Requirements

The Architect shall, at his sole expense, maintain in effect at all times during the full term of its services under this Agreement and as otherwise required hereunder, insurance coverages with limits not less than those set forth below with the insurers licensed to do business in the jurisdiction in which the Project is located or otherwise acceptable to the Owner and under forms of policies satisfactory to the Owner. None of the requirements contained herein as to types, limits or Owner's approval of insurance coverage to be maintained by the Architect are intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by the Architect under this Agreement or otherwise provided by law.

1. **Commercial General Liability ("CGL") --** Bodily Injury/Property Damage (occurrence basis) - $1,000,000.00 each occurrence, or equivalent, and $2,000,000.00 aggregate.

This policy shall be on a form at least as broad as the 2001 edition of Commercial General Liability Coverage Form (CG 00 01 10 01) as published by the Insurance Services Office, Inc., or as otherwise acceptable to the Owner, and shall include the following coverages:

a. Premises/Operations;
b. Independent Contractors;
c. Broad Form Contractual Liability;
d. Broad Form Property Damage; and
e. Personal Injury Liability with employees and contractual exclusions removed.

This coverage may be provided through a combination of a primary liability policy with additional excess or umbrella coverage only if (a) the minimum limits for the primary liability policy are not less than $500,000 for each occurrence, (b) the excess or umbrella provides coverage which is no less broad than the primary liability policy and meets all the other requirements hereunder for the commercial general liability coverage, and (c) the excess or umbrella coverage covers excess liability only for claims or losses otherwise covered by the commercial general liability policy or the comprehensive automobile liability policy (*i.e.,* must include "Follow Form" language).

2. **Comprehensive Automobile Liability ("Automobile Liability") --** Bodily Injury/Property Damage - $1,000,000 combined single limit – each accident.

This policy shall be on a standard form (approved by the Texas Department of Insurance) written to cover all owned, hired and non-owned automobiles.

3. **Workers' Compensation and Employer's Liability**

The Architect shall maintain during the term of the Agreement statutory Workers' Compensation Insurance Coverage [as defined in Sec. 402.011(44) of the Texas Labor Code (1995)] for all of Architect's employees or workers at the site of the project. In case any work is sublet, the Architect shall require all of its sub-consultants or agents to provide Workers' Compensation insurance for all the latters' employees unless such employees are covered by the protection afforded by the Architect, or, when applicable, such sub-consultant or agent has complied with the requirements for joint agreements with independent contractors under Sections 406.141 - 406.145, Texas Labor Code (1995). U.S. Longshoreman and Harbor Workers' Compensation coverage shall be provided where such exposure exists. ***No "alternative" form of coverage will be accepted under any condition.***

Additionally, Contractor shall maintain during the term of the Work Employers' Liability Coverage as follows:

$1,000,000	Bodily Injury by Accident -- Each Accident
$1,000,000	Bodily Injury by Disease -- Each Employee
$1,000,000	Bodily Injury by Disease -- Policy Limit

4. **Professional Liability Insurance *(Claims Basis)***

The Architect agrees to provide and maintain, at its expense, a Professional Liability Insurance Policy with minimum limits as set forth below. The Architect shall maintain the insurance for a period that will cover claims made within three (3) years after the date of the substantial completion of the construction of the Work that is performed in accordance with the services of this Agreement. The Architect will provide the Owner with proof of the terms and conditions of the policy providing Professional Liability coverage reasonably acceptable to the Owner.

Minimum limits: $10,000,000 – per claim / $10, 000,000 – aggregate of all claims per annum

- Should the Owner require additional coverage or higher limits of liability, the Owner shall pay for the premium for the excess insurance coverage.

5. **Subconsultants' Insurance**

Insurance similar to that required of the Architect shall be provided by all subconsultants of Architect to cover their operation performed hereunder. However, the minimum limits for such subconsultants shall be $1,000,000 for CGL (per claim and aggregate) and $1,000,000 (per claim) and $2,000,000 aggregate for professional liability, except as otherwise expressly provided in the Agreement (or an Exhibit thereto) or as otherwise agreed in writing by Owner and Architect.

Architect shall maintain Certificates of Insurance from all subconsultants, enumerating, among other things, the Waivers in favor of, and Additional Insured status of, the Owner and the other

Indemnified Parties, as required herein, and make them available to the Owner upon request.

GENERAL REQUIREMENTS (APPLICABLE TO ABOVE)

A. All insurance coverages required herein must be written with insurance companies licensed and admitted by the applicable state Department of Insurance to provide such insurance coverage in the state in which the respective Project is located. Such coverage must be written on forms of policies reasonably satisfactory to Owner. All such insurers must be reasonably acceptable to Owner and, other than the insurer(s) providing the Workers' Compensation Insurance Coverage, rated no less than A VI or better as shown in the most current issue of A.M. Best's Key Rating Guide.

B. All deductibles and self-insured retention amounts (except as expressly set forth herein) must be acceptable to the Owner.

C. Any and all deductibles in the above-described liability insurance policies shall be assumed by, for the account of, and at the sole risk of the Architect.

D. **Additional Insured.** To the fullest extent permitted by Applicable Law, the CGL and Automobile Liability policies each must name the Owner and ***the other Indemnified Parties identified in the Agreement***, as Additional Insureds using an endorsement form reasonably acceptable to Owner and that provides additional insured coverage to the Owner and the Indemnified Parties for covered claims under the respective policies to the extent of the Architect's indemnity obligations set forth in the Agreement.

E. **Primary/Non-Contributing Liability.** The CGL and Automobile Liability policies required to be furnished and maintained by Architect shall be primary insurance to any other insurance that may be available to Owner and ***the other Indemnified Parties identified in the Agreement***. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Owner and ***such other Indemnified Parties***, with Owner's and ***such other indemnified Parties'*** insurance being excess, secondary, and non-contributing.

F. **Waivers of Subrogation**. Waivers of Subrogation shall be provided in favor of Owner and ***the other Indemnified Parties identified in the Agreement*** on CGL, Automobile Liability, and Workers' Compensation/Employers policies furnished and maintained by Architect.

G. **Notice of cancellation or non-renewal.** The CGL and Automobile Liability policies (whether by policy language or endorsement) must provide for thirty (30) days notice of cancellation or non-renewal to Owner. Architect expressly agrees to notify Owner at least thirty (30) days prior to the effective date of any material changes in the coverages required hereunder

H. **Proof of Insurance**. Before commencing performance of the Work, the Architect (and those subconsultants as reasonably requested by Owner) must furnish to Owner certificates of insurance for the coverage required hereunder (on such form reasonably acceptable to Owner) or, if requested by Owner, copies of such insurance policies evidencing the terms and conditions required hereunder.

Proof of insurance required hereunder must clearly set forth:

1. Insurance coverage as required herein (including all endorsements setting out coverages).
2. The effective expiration dates of policies.
3. 30 days' prior written notice to the Owner of cancellation or non-renewal of the policy.
4. A waiver of subrogation endorsement in the policies as required herein.
5. Any deductible and/or self-insured retention.
6. Any exclusions to the policy (clearly identifying any endorsements excluding coverages) which are not part of the required standard form of policy.
7. Owner and ***the other Indemnified Parties*** named as Additional Insureds on all liability policies required hereunder by Owner consistent with the requirements set forth herein.

OWNER / ARCHITECT AGREEMENT
EXHIBIT E

Payment Terms and Invoicing Requirements

1. Basic Compensation.

Architect's compensation for Basic Services shall be a stipulated sum in the amount of _____ Dollars ($_____).

Architect's compensation for Basic Services for each phase shall be payable as follows:

Schematic Design Phase:	_____ percent	(___%)
Design Development Phase:	_____ percent	(___%)
Construction Documents Phase:	_____ percent	(___%)
Bidding or Negotiation Phase:	_____ percent	(___%)
Construction Phase:	_____ percent	(___%)
Total Basic Compensation	One Hundred percent	(100%)

Sub-consultant Fees furnished as Basic Services are included in the stipulated sum for the Basic Services as set forth above, except as follows:

_____

Sub-consultant Fees charged separately from the stipulated sum for Basic Services as identified above shall not be subject to a markup. However, Sub-consultant Fees for Additional Services as approved in accordance with the Owner/Architect Agreement shall be subject to a mark-up of ____ percent (___%).

2. Additional Services Compensation.

Architect's Hourly Fee schedule for Additional Services is as follows:

Position/Job Classification	Hourly Billing Rate

Such Hourly Billing Rates include all benefits payable to such persons employed in the respective Position/Job Classifications noted above and shall, except for any mark-up expressly by the Agreement, represent Architect's full compensation for the services performed by such persons in the respective Position/Job Classification noted above.

3. Reimbursable Expenses.

The following costs and expenses actually incurred and reasonably required for the performance of Architect's services are reimbursable subject to the terms of this Agreement:

a. Reasonable travel and living expenses of Architect outside its headquarter city, incurred on visits pre-approved by Owner to Owner's Project(s) as herein required or as otherwise authorized by Owner. Private transportation shall be reimbursed at the IRS standard mileage rate in effect at the time of travel; commercial air travel shall be reimbursed at tourist class rates, unless otherwise authorized by Owner. Meals should be within reasonable limits and are subject to a $50 per person, per day, maximum.

b. The actual cost of all long distant telephone calls, telegrams, and shipping and postage expense which may be necessary to provide services required hereunder.

c. The cost of office supplies, parking, document reproduction, check plots, mylar ink plots, CAD plots, mock-ups (if authorized by Owner), typography, technical specifications, offset printing, laser plots, long-distance telephone, photography, photographic supplies and prints, renderings, models (if authorized by Owner), postage, delivery, computer equipment time, and other similar project related expenses.

d. Any additional insurance costs pre-approved by Owner in writing.

Costs and expenses not specifically listed above, unless previously approved in writing by Owner, are not reimbursable. Further, personal items, such as magazines, candy, cigarettes, airline beverages, etc., are not reimbursable.

4. Terms of Payment.

Architect shall submit monthly invoices in such form and supported by such documentation as reasonably required by Owner to identify and verify the amounts requested for payment (including fees and reimbursable costs whether incurred internally by Architect or through third-party vendors or subconsultants). Payment shall be made monthly, not later than thirty (30) days after submission of the invoice and documentation as required hereunder.

OWNER / ARCHITECT AGREEMENT
EXHIBIT F

Instruments of Service:
Conveyance of Rights to Owner

Instruments of Service. Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants in connection with the Agreement are Instruments of Service (the "Instruments of Service").

Conveyance of Rights to Owner. To the fullest extent allowed by applicable law, Owner shall be the absolute and unqualified owner of the Instruments of Service for the Project, including all drawings, preliminary layouts, record drawings, sketches and other documents prepared and to be prepared pursuant to this Agreement by the Architect and its consultants, upon delivery thereof to Owner or its agents or contractors or upon submission thereof to such governmental authorities in connection with any required approval for the design and/or construction of the Project, with the same force and effect as if Owner prepared same, and Architect hereby assigns, conveys and grants all such rights to Owner, including all copyrights and other intellectual property rights with respect thereto. Upon Owner's request, all completed or partially completed mylar reproducible, preliminary layouts, record drawings, digital files, sketches and other documents prepared pursuant to this Agreement shall be delivered to Owner when and if this Agreement is terminated or upon completion of this Agreement, whichever occurs first. In such event, the Architect may retain one (1) set of reproducible copies of such documents and such copies shall be for the Architect's sole use in preparation of studies or reports for Owner only.

Re-Use of Instruments of Service by Owner. Owner agrees that before any re-use of the Instruments of Service without the Architect's consent in connection with (i) renovations of or additions to the Project for which signed and sealed design documents are required by applicable law, (ii) the re-construction of the Project, or (iii) any use of the Instruments of Service in connection with any other Project, Owner will bind by contract similarly credentialed design professionals to assume all responsibility for the design of any future improvements as their own and that all such Instruments of Service for future improvements will be sealed by those architects or design professionals, without any documented references to Architect or its consultants not engaged in the Project at the time. Owner hereby waives and releases any claim it may have against the Architect arising from any such re-use of such Instruments of Service without the express consent of the Architect.

Architect's Rights with Regard to Instruments of Service. The Architect is expressly prohibited from selling, licensing or otherwise marketing or donating the Instruments of Service, or using the Instruments of Service in the preparation of other work for any other owner, without the prior express written permission of Owner. Notwithstanding the foregoing, Architect hereby retains joint ownership of, and shall be entitled to use, details, effects and design components of the Project which may have been incorporated into the Instruments of Service, provided that such details, effects and design components when taken independently or in combination would not produce a project with substantially similar distinctive features to this Project. Additionally, to the extent that the Instruments of Service contain notes, terms or details that have been

developed by the Architect over years of practice, the Architect also shall have the right to use such details on other projects.

Scanned or Non-revisable Electronic Format Copies of Instruments of Service. As part of any Basic Services compensation, the Architect shall provide, in a medium (e.g., disk, magnetic tape, network direct transfer, etc.) approved by the Owner, a scanned or non-revisable electronic format copy (in PDF or DWF format as requested by Owner) of the most recent design drawings and such other Instruments of Service requested by Owner, including those which were produced or created by the Architect's consultants.

CAD File Electronic Format Copies of Instruments of Service. As part of any Basic Services Compensation, the Architect shall further provide those most recent design drawings and such other Instruments of Services requested by Owner in CAD File electronic format (the "Drawing Files"), including those which were produced or created by the Architect's consultants, subject to the following terms and conditions:

Owner shall be expressly authorized to use such Drawing Files for its own use for purposes of facilities management and leasing activities for the Project. Such Drawing Files shall not be used as actual working drawings for purposes of construction of improvements and shall not be furnished to tenants or prospective tenants or their agents, contractors or design professionals, without the Architect's express consent, except in a scanned or non-revisable electronic format such as PDF or DWF.

Owner acknowledges that significant differences may exist between Drawing Files and corresponding hard copy contract documents due to addenda, change orders or other revisions. Architect makes no representation regarding the accuracy or completeness of the Drawing Files furnished by Architect. In the event that a conflict arises between signed hard copy Instruments of Service and the Drawing Files, the signed hard copy Instruments of Service shall govern.

Because of the potential that the information presented on the Drawing Files can be modified, unintentionally or otherwise, Architect may, where permitted by law, remove its seal from each electronic display.

Owner agrees and acknowledges that the delivery of the Drawing Files for use by the Owner shall not constitute a sale and that no rights are transferred beyond those expressly contained in this Agreement. Except as otherwise provided in this Agreement, Architect makes no warranties, either express or implied, of merchantability and fitness for any particular purpose with regard to the Drawing Files.

Except as otherwise expressly provided herein, nothing herein shall relieve the Architect from any responsibility or liability it may have under the Agreement or applicable law for the hard copy Instruments of Service furnished to Owner or the information contained therein.

OWNER / ARCHITECT AGREEMENT

EXHIBIT G

OWNER'S STANDARD GENERAL CONDITIONS

[See Attached]

DRAFT AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

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

STADIUM TRACT FACILITIES

THE OWNER:
(Name and address)

CITY OF FRISCO, TEXAS

THE ARCHITECT:
(Name and address)

THE CONTRACTOR:

References herein to the "Contractor" shall mean the "Construction Manager" as identified in the A133 Agreement entered into by the parties for the Project.

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.

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

DRAFT

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13 MISCELLANEOUS PROVISIONS

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15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the "Agreement"). See Articles 1 and 16 of the Agreement.

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all labor, parts, supplies, skill, supervision, transportation, services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items needed to produce, construct and fully complete the Work items shown by the Contract Documents.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Consistent with Article 1 of the Agreement, in the event of any inconsistency or conflict between any provision in the Agreement (or Exhibits attached thereto and incorporated therein) and the General Conditions, on the one hand, and any provisions in the Specifications, on the other hand, the terms of the Agreement and the General Conditions shall control.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements and to which the Owner has been granted certain rights as set out in the Agreement between the Owner and the Architect for the design services for the Project. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 APPLICABLE LAW

Except as otherwise expressly provided in the Agreement, the term "Applicable Law" or "Applicable Laws" as used in the Contract Documents shall have the meaning set forth in the Agreement.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary (except as otherwise provided in Article 1 of the Agreement), and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Notwithstanding the foregoing, but except as otherwise provided in the Agreement with regard to the precedence given to Contract Documents, in the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity

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of Work and (2) comply with the more stringent requirement. With regard to inconsistencies in the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings. The terms and conditions of this Section shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify the Architect, who will issue a written addendum to all parties.

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

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

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

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
§ 1.5.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. Neither the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall 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 this Project is not to be construed as publication in derogation of applicable copyrights or other reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment 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.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM
If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER
§ 2.1 GENERAL
§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative (Owner's Designated Representative as identified in the Agreement and Exhibits thereto).

§ 2.1.2 [*Intentionally deleted.*]

§ 2.1.3 The presence of the Owner or Blue Star (or their representatives) or Architect at the Site does not imply acceptance or approval of the Work.

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§ 2.1.4 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 2.1.5 It is further understood and agreed that, because of the contractual obligations of Owner and Blue Star relating to the improvements to be constructed hereunder and the financing for construction arising under that certain Master Development Agreement for Dallas Cowboys Facilities and Related Improvements, Blue Star shall be a third-party beneficiary of this Contract. Construction Manager acknowledges and agrees that, notwithstanding the third party beneficiary rights of Blue Star arising under this Contract, Construction Manager is not contracting with Blue Star with regard to the construction of the improvements hereunder and that Construction Manager shall have no contractual cause of action against Blue Star arising from this Contract, except as may otherwise be expressly agreed, in writing, between the Construction Manager and Blue Star.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Contractor acknowledges and agrees that, prior to commencement of the Work, the Contractor has received all information requested by the Contractor or otherwise required by Applicable Law with regard to the financial arrangements Owner has made to fulfill the Owner's obligations under the Contract and is satisfied as to the adequacy of such arrangements. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the financial arrangements made by the Owner have materially changed. The Owner shall furnish such evidence as a condition precedent to continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities as provided by the Contract Documents.

§ 2.2.3 If requested to do so by the Contractor, the Owner shall furnish a survey describing, to the extent reasonable and customary, physical characteristics, legal limitations and utility locations (other than visible utilities). The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner in connection with such survey but shall exercise proper precautions relating to the safe performance of the Work. Notwithstanding the delivery of such information and documents by Owner, Contractor shall perform all work in a non-negligent manner so as to avoid damaging any utility lines, cables, pipes or pipelines on the Property. As between Owner and Contractor, Contractor shall be responsible for any damage(s) done to such lines, cables, pipes and pipelines during its construction work resulting from the negligent conduct of Contractor or any of its Subcontractors.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. This right shall be in addition to, and not in restriction of, the Owner's rights under Subsection 12.2.

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§ 2.3.2 If suspension of the Work is warranted by reason of unforeseen conditions which are likely to adversely affect the quality of the Work if such Work were continued, Owner may suspend the Work by written notice to the Contractor. In such event, the Contract Time and the Contract Sum shall be adjusted accordingly, subject to the terms of Sections 3.2, 3.7.4, and 8.3.3 hereof. If Contractor, in its reasonable judgment, believes that a suspension is warranted by reason of unforeseen circumstances which may adversely affect the quality of the Work if the Work were continued, Contractor shall immediately notify Owner and Blue Star of such belief.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies including, without limitation, Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor shall be reasonable and necessary. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The rights of the Owner hereunder shall not give rise to any duty on the part of the Owner to exercise same for the benefit of the Contractor or any other person or entity. If providing the above-referenced prior notice to the Contractor is not reasonable because of an emergency or exigent circumstances, the Owner shall provide only such prior notice which is reasonable under the circumstances.

§ 2.4.2 After the Work is complete, the Owner may make emergency repairs to the Work if necessary to prevent further damage, or if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if the reason for the repairs is defects in Contractor's Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner.

§ 2.5 EXTENT OF OWNER'S RIGHTS.

§ 2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

§ 2.5.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement (or as the "Construction Manager" if the Agreement is an AIA A133) and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Construction Manager or the Construction Manager's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and all Applicable Law, including all statutes, ordinances, building codes and governmental rules and regulations that bear upon the performance of the Work. The Contractor shall prosecute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards for construction of projects similar to the Project, using qualified, careful, and efficient workers and in conformity with the provisions of this Contract and the other Contract Documents. Contractor shall at all times use reasonable measures to protect the Work from damage caused by weather and casualties.

§ 3.1.3 The Contractor shall furnish construction administration and management services as required by the Contract Documents and use the Contractor's best efforts to perform the Work of the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and

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cooperation among the Owner, Architect, Contractor and other persons or entities employed by the Owner for the Project.

§ 3.1.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Without limiting its obligations under the Contract Documents, execution of the GMP Amendment (see Section 2.2.6 of the Agreement) 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, reasonably observable condition and the layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or for any improvements located on the Project site or for price escalations in the marketplace. Price escalations in the marketplace shall not be reimbursed by the Owner in excess of the GMP and shall not cause the GMP to be increased. The Contractor (as between the Owner and the Contractor) shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Without limiting its obligations under the Contract Documents, because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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 in writing to the Owner, Blue Star, and Architect (as a request for information in such form as the Architect may require) any errors, inconsistencies or omissions discovered by or made known to the Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as an experienced contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

Notwithstanding the foregoing, the exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Law, including all applicable statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report in writing to the Owner, Blue Star, and the Architect any nonconformity discovered by or made known to the Contractor or any suspected nonconformity which has been raised or discussed by Contractor's supervisory personnel as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Owner or the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for nonconformities of the Contract Documents to Applicable Law, unless

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the Contractor recognized, or in the exercise of reasonable caution and care should have recognized, such error, inconsistency, omission or difference and failed to report it to the Architect.

§ 3.2.5 Prior to performing any Work, Contractor shall locate all utility lines, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, as shown and located on the plans and specifications and the survey (if any) furnished pursuant to Section 2.2.3 above and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines. Contractor shall be responsible for any negligent damage done to said lines, cables, pipes and pipelines during its construction work. In addition, Contractor shall review any applicable hazardous materials surveys for the particular buildings, if any, involved in the Project(s), and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing or dislodging any asbestos-containing materials that are clearly identified and located in any such hazardous material surveys.

§ 3.2.6 Neither any oral representation by or oral agreement with the Owner, Blue Star, Architect, or any representative, consultant, officer, agent, or employee of Owner, Blue Star, or Architect before execution of this Contract shall affect or modify any of Contractor's rights or obligations hereunder, all such prior oral representations, understandings, and agreements being superseded by this Contract. Contractor is not aware of any facts that make misleading or inaccurate in any material respect any information Owner, Blue Star, or Architect or any of their representatives, consultants, officers, agents, or employees have furnished to Contractor which would have a material, adverse affect on the Contract Time or Contract Sum, and if, during the course of the performance of the Work, Contractor learns of any such facts, it will so advise each of said parties.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, Blue Star, and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures except to the extent such loss or damage results from or is caused by the Contractor's failure to follow instructions or the Contractor's failure to exercise reasonable care and skill in carrying out such instructions. Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, *et. seq.*

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, Sub-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 and Sub-subcontractors.

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

§ 3.3.4 Contractor, its subcontractors and vendors shall bear responsibility for compliance with Applicable Law, including but not limited to all federal, state and local laws, regulations, guidelines and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct. In case of entry by the Contractor or any of the Contractor's agents or employees, upon the property or premises of the Owner, for the purposes of construction, erection, inspection, or delivery under this contract, the Contractor agrees to provide (or cause to be provided through its Subcontractors) all necessary sufficient safeguards and to take all proper precautions against the occurrence of accidents, injuries, or damages to any person or property.

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§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Contractor may make substitutions only with the consent of the Owner as provided herein and in accordance with a Change Order or Construction Directive.

§ 3.4.2.1 Contractor may submit for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions must be made in writing at such time as not to delay the Work and should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements of the Contract Documents. The Architect shall review proposed substitutions within a reasonable time. Contractor shall bear the risk of any delay in performance caused by submitting substitutions. The Owner may approve or deny substitutions in its sole discretion. No approved substitution shall change the requirements of the Contract Documents until it has been incorporated into the Contract as a Modification in accordance with the requirements of the Contract Documents.

§ 3.4.2.2 When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for proper functioning shall also be provided, but not including any manufacturers' options on any particular device, which device is specified in the Contract Documents. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition at the time of contract execution shall apply. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

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

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of specified quality, recent manufacture, 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 that the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranties set out in this subsection are in addition to and not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or implied under Applicable Law or the Contractor's obligations under the corrective period set out in Article 12 below.

§ 3.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work and as a condition to final payment (see Section 12.2.6 of the Agreement), any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. The Contractor warrants that all manufacturers' or other warranties on all materials and equipment furnished by or through the Contractor shall run directly to or be specifically assigned to the Owner at Substantial Completion of the Project. The Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications, as applicable. If required by the Contract Documents, prior to Substantial Completion, the Contractor shall obtain a statement from the manufacturer approving the Contractor's installation of all materials and equipment. If the Owner seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer fails to honor its warranty based, in whole or in part, on a

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claim of defective installation, the Owner shall be entitled to enforce any claim for defective installation against the Contractor.

§ 3.5.3 All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms at the time of Substantial Completion.

§ 3.6 TAXES

This Project is eligible for exemption from the State Sales Tax on materials incorporated in the Project, provided that Contractor fulfills the requirements of State Tax Laws. For purposes of establishing exemption, it is understood and agreed that Contractor will be required to segregate materials and labor costs at the time a contract is awarded, and will accept an exemption certificate from Owner. The Contractor shall pay any taxes out of its Fee (*i.e.*, not as a reimbursable Cost of the Work) otherwise assessed because of Contractor's failure to comply with the requirements of State Law to qualify for that tax exemption.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall assist the Owner in securing, but the Owner shall pay for, the building permit. The Contractor shall be responsible for payment of all other permits, governmental fees, licenses, and inspections necessary for proper execution of the contract and which are legally required as of the date of the Agreement. The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

§ 3.7.2 The Contractor shall comply with and give notices required by Applicable Laws, including all applicable statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing, or in the exercise of reasonable caution and care should have known, it to be contrary to Applicable Law or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Without limiting the foregoing, in the event that Contractor deviates from the plans and specifications, except to the extent such deviation is expressly authorized by the Contract Documents and approved by the Owner and the Architect in writing, Contractor shall assume responsibility for such deviations and shall bear the costs of bringing such Work into compliance with Applicable Law and the Contract Documents.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or which were not reasonably inferable by the Contractor from the Contract Documents and field conditions at the site of the Project or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, or (3) unknown or concealed physical conditions that Contractor should not reasonably have known or anticipated based on the area in which the site of the project is located, the type of improvements involved, or the practices prevalent in the construction industry, the Contractor shall promptly provide notice to the Owner, Blue Star, and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Owner will direct the Architect to investigate such conditions and, if the Architect finds that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner and Contractor agree with the Architect's recommendations, the parties will execute a Change Order to reflect such agreed adjustment. If the Architect finds that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's findings or recommendation, that party may proceed as provided in Article 15.

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§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Blue Star, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, and other expenses contemplated for stated allowance amounts shall be included in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in the Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.8.4 Contractor shall keep separate and adequate records of all allowances and shall submit such records to Owner from time to time upon request. Owner shall be responsible for costs incurred in excess of allowance amounts only to the extent approved by Owner in writing.

§ 3.8.5 Allowances shall be reflected in the Schedule of Values and Contractor shall not have the right to shift allowances to other line items in the Schedule of Values except in accordance with the requirements of Section 7.1.5 of the Agreement and with the Owner's written approval, in its sole discretion.

§ 3.9 SUPERINTENDENT / SAFETY PROFESSIONAL

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Additionally, the Contractor shall employ a competent safety professional (who may or may not be the superintendent) and necessary assistants who shall be in attendance at the project site during performance of the work. The safety professional shall enforce all applicable construction safety standards, develop a progressive discipline program, monitor employee safety compliance, and document safety violations. Important communications shall be confirmed in writing.

§ 3.9.2 The parties acknowledge and agree that, as part of the selection process of the Contractor by the Owner and prior to the execution of the Agreement, the Contractor has submitted the names of its Senior Project Personnel, including the Contractor's Project Manager who will be responsible for the Project, and all full-time supervisory personnel for the Project, including the superintendent. Contractor's Senior Project Personnel are as identified in the Agreement and have been approved by the Owner.

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

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES / REPORTS

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's, Blue Star's, and Architect's information a Contractor's construction schedule for the Work ("Contractor's Progress Schedule"). The Contractor's Progress Schedule shall not exceed time limits current under the Contract Documents (including the Critical Milestones, if any, established in 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. A detailed critical path schedule format shall be used for the Contractor's Progress Schedule with thorough updates to such Schedule prepared at least monthly. All Schedule updates shall address the subject of how the Contractor intends to address any critical path delays previously encountered. The Contractor's Progress Schedule and all updates should address submittal activities as well as actual field construction activities.

§ 3.10.2 The Contractor shall prepare and keep current, for the Owner's approval, a schedule of submittals which is coordinated with the Contractor's Progress Schedule, and allows the Owner, Blue Star, and the Architect reasonable time to review submittals. If the Contractor fails to submit and maintain a submittal schedule as required herein, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent Contractor's Progress Schedule submitted to the Owner and Blue Star, provided such Schedule is consistent with and does not exceed the time limits under the Contract Documents, including but not limited to the Schedule of the Work and its Critical Milestones, if any.

§ 3.10.4 Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and costs to a minimum.

§ 3.10.5 The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner, Blue Star, and Architect. The Contractor shall also develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner, Blue Star, and Architect at regular intervals. The Contractor shall additionally prepare a monthly schedule summary report in a form and of sufficient detail and character as approved by the Owner. The report at a minimum shall include a four week "look ahead" and specify whether the Project is on schedule, and if not, the reasons therefor and the terms of the new schedule, all in comparative form. The Contractor shall hold weekly progress meetings at the Site (with Owner and its authorized representatives entitled to attend) or at such other time, place, and frequency as are reasonably acceptable to Owner. Progress of the Work shall be reported in detail with reference to construction schedules. Contractor shall be responsible for preparing and distributing (on the business day preceding the meeting) to Owner, Blue Star, and Architect a written agenda for the meeting, in a form and with such content as reasonably required by Owner, which includes a status report of all pending submittals, RFI's, known or anticipated impediments to construction, accidents and injuries, and pending business/action items (with a designation of who is responsible for each pending item). When it appears to Owner or Contractor that a contract milestone or completion date cannot be met for reasons not the fault of the Contractor, Contractor will develop with Owner a plan and a budget under the Change Order provision of the Contract Documents to meet such a situation either (at Owner's option) by accelerating the Work to overcome the delays, or suspending or otherwise slowing the Work to efficiently take advantage of any relaxation in Owner's need for the completed Work.

§ 3.10.6 Unless otherwise directed by Owner, the Contractor shall prepare and promptly distribute meeting minutes of all monthly and weekly meetings held hereunder.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes (including changes in the field) and selections made during construction. At the end of construction, these documents shall be

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turned over to the Owner with the Contractor's certification that they show complete and exact "as-built" conditions. The Contractor shall further maintain at the site and available for Owner's inspection one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner, Blue Star, and the Architect and shall be delivered to the Owner upon completion of the Work.

§ 3.11.2 Contractor shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their representative agents, within five (5) working days of request by Owner, Architect, or their agents.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. If the Contractor is installing materials as expressly required by the Contract Documents, a submittal shall not be required unless requested by the Owner or the Architect. However, the Contractor must keep detailed records of what is installed and not submitted for approval, and shall assume full responsibility to correct any issue that may arise if the materials are not installed in accordance with the Contract Documents.

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

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

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Owner or the Architect (pursuant to Sec. 3.12.4 above) or the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. In such event, the Contractor shall provide design and other professional services in full compliance with Applicable Law. When such services are required under Applicable Law to be performed by properly licensed professionals, the Contractor shall cause such services or certifications to be provided by such properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that licensed design professional to carry comprehensive general liability and errors and omissions insurance coverage in the same amounts and forms as that required of the Architect on this Project. In the event that that licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms required of the Architect on this Project.

§ 3.12.11 The Contractor shall assemble for approval by Owner three (3) copies in loose leaf binders of all operating and maintenance data for all equipment installed as a part of the Work, which binders must be delivered to Owner on or before Final Completion of the Work or as otherwise provided in the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by Applicable Law and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall maintain a reasonably neat and orderly jobsite and shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At

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completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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

§ 3.16 ACCESS TO WORK
The Contractor shall provide the Owner, Blue Star, and Architect, and their consultants and representatives, access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS
The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Blue Star, and Architect harmless from loss on account thereof, but shall not be responsible for such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and the Architect.

§ 3.18 INDEMNIFICATION
§ 3.18.1 To the fullest extent permitted by law (including Chapter 151, Texas Insurance Code), the Contractor hereby protects, indemnifies and holds harmless and shall defend the Owner, the Owner's Lender (if any), and Blue Star, and their directors, officers, parents, subsidiaries, affiliates, joint venturers, partners, employees, agents and representatives (hereinafter referred to individually as an "Indemnified Party" and collectively as the "Indemnified Parties") from and against claims, actions, liabilities, losses, and expenses, including but not limited to attorneys' fees and costs and expenses of litigation or arbitration incurred by an Indemnified Party, arising out of or resulting from the performance or a failure in the performance of the Work of the Contract by or through the Contractor or any other negligent or wrongful act or omission of the Contractor or one of its Subcontractors or Suppliers (of any tier) or anyone else directly or indirectly employed by them or anyone for whose acts they may be liable (hereinafter referred to collectively as the "Subcontractor Parties"), except to the extent caused by the negligent acts or omissions of the Indemnified Parties or their design professionals, consultants, or separate contractors (other than the Contractor and the Subcontractor Parties). 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 3.18.

CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER THIS SECTION 3.18 SHALL ARISE REGARDLESS OF ANY ASSERTION OR FINDING THAT OWNER OR ANY OTHER INDEMNIFIED PARTY IS LIABLE BY REASON OF NON-DELEGABLE DUTY, IS LIABLE FOR JOINT, CONCURRING, OR CONTRIBUTORY NEGLIGENCE OR BREACH OF CONTRACT OR VIOLATION OF LAW, OR OTHERWISE CAUSED, IN PART, THE LIABILITIES.

Expenses recoverable by an Indemnified Party as part of the Contractor's indemnity obligations under this Section 3.18 shall include, without limitation, all attorneys' fees and any costs incurred by Owner in enforcing the provisions of the Contractor's indemnity obligations.

Except as provided in Subsections 3.18.2 through 3.18.4 below, in the event that an Indemnified Party or their design professionals, consultants, or separate contractors (other than the Contractor and the Subcontractor Parties) are found, by final judgment or arbitration award, to be negligent or at fault in whole or in part, the indemnity and hold harmless obligation of the Contractor with regard to attorney's fees and litigation or arbitration costs and expenses incurred by an Indemnified Party in defense of such claim shall be reduced by the percentage of negligence or fault of the Indemnified Party and/or their design professionals, consultants, or separate contractors (other than the Contractor and the Subcontractor Parties).

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§ 3.18.2 BROAD FORM INDEMNITY FOR EMPLOYEE, ON-THE-JOB BODILY INJURY CLAIMS:

WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR HEREBY INDEMNIFIES, DEFENDS, AND HOLDS HARMLESS THE OWNER AND THE OTHER INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES AND LITIGATION OR ARBITRATION COSTS AND EXPENSES INCURRED BY OWNER AND/OR THE OTHER INDEMNIFIED PARTIES HEREUNDER, IN CONNECTION WITH SUCH ACTIONS AGAINST OWNER AND/OR AN INDEMNIFIED PARTY FOR THE PERSONAL INJURY AT THE PROJECT SITE OF AN EMPLOYEE OF THE CONTRACTOR OR ITS SUBCONTRACTORS OF ANY TIER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT OF THE NEGLIGENCE OR FAULT OF THE OWNER OR THE INDEMNIFIED PARTIES.

§3.18.3 BROAD FORM INDEMNITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS:

WITHOUT LIMITING THE FOREGOING, AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR HEREBY INDEMNIFIES, DEFENDS, AND HOLDS HARMLESS THE OWNER AND THE OTHER INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES AND LITIGATION OR ARBITRATION COSTS AND EXPENSES INCURRED BY OWNER AND/OR THE OTHER INDEMNIFIED PARTIES HEREUNDER, IN CONNECTION WITH SUCH ACTIONS AGAINST OWNER AND/OR AN INDEMNIFIED PARTY FOR AN INFRINGEMENT OR ALLEGED INFRINGEMENT OF A COPYRIGHT OR OTHER SIMILAR INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH ANY INSTRUMENTS OF SERVICE FURNISHED BY OR THROUGH THE CONTRACTOR OR ANY DESIGN OF THE PROJECT BY OR THROUGH THE CONTRACTOR (TO THE EXTENT CONTRACTOR HAS ASSUMED DESIGN RESPONSIBILITIES UNDER THE CONTRACT DOCUMENTS) OR IN CONNECTION WITH A MEANS, METHOD OR PROCESS USED BY THE CONTRACTOR IN THE PERFORMANCE OF THE WORK OF THE CONTRACT (HEREINAFTER REFERRED TO AS AN "INTELLECTUAL PROPERTY INFRINGEMENT CLAIM"), EVEN TO THE EXTENT OF THE NEGLIGENCE OR FAULT OF THE OWNER OR THE INDEMNIFIED PARTIES.

§3.18.4 BROAD FORM OBLIGATION TO DEFEND EMPLOYEE INJURY AND INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS UPON OWNER'S DEMAND.

In addition to and notwithstanding the foregoing, upon timely written notice, Owner may, in its sole discretion, require Contractor to defend the Owner and the other Indemnified Parties in connection with any action (whether in litigation or arbitration) asserting an "Employee Injury Claim" or an "Intellectual Property Infringement Claim". **TO THE FULLEST EXTENT ALLOWED BY LAW, CONTRACTOR'S OBLIGATION TO DEFEND OWNER OR ANY OTHER INDEMNIFIED PARTY IN AN ACTION ASSERTING AN EMPLOYEE INJURY CLAIM OR AN INTELLECTUAL PROPERTY INFRINGEMENT CLAIM SHALL ARISE REGARDLESS OF THE ALLEGED NEGLIGENCE OR FAULT OF THE OWNER OR SUCH OTHER INDEMNIFIED PARTY FOR WHOM CONTRACTOR IS OBLIGATED TO DEFEND. IN THE EVENT SUCH DEFENSE HAS BEEN TENDERED TO CONTRACTOR AND CONTRACTOR HAS REFUSED OR FAILED TO DEFEND SUCH CLAIM, CONTRACTOR SHALL BE LIABLE AND SHALL REIMBURSE OWNER AND SUCH OTHER INDEMNIFIED PARTIES FOR THEIR ATTORNEY'S FEES AND LITIGATION OR ARBITRATION COSTS AND EXPENSES INCURRED IN SUCH DEFENSE, REGARDLESS OF ANY FINDING OR DETERMINATION OF NEGLIGENCE OR FAULT OF THE OWNER OR SUCH OTHER INDEMNIFIED PARTIES.**

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

§ 3.18.6 Contractor's indemnification obligations arising under this Section 3.18 shall not be limited by any limitation on the measure of damages as set forth in the Contract Documents.

§ 3.18.7 The indemnity provisions set forth in this Section 3.18 shall survive the expiration or earlier termination of this Contract, the final completion of the Work, and any other services to be provided pursuant to this Agreement.

ARTICLE 4 ARCHITECT / ROLE OF DESIGN PROFESSIONAL DURING CONSTRUCTION

§ 4.1 GENERAL

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture (or engineering if the professional design services required to be performed hereunder are authorized under Applicable Law to be performed by a licensed engineer) or an entity lawfully practicing architecture (or engineering if so authorized) identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 *[Intentionally deleted.]*

§ 4.1.3 *[Intentionally deleted.]*

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide such services with regard to the administration of the Contract as described in the Contract Documents or as requested by the Owner. The Architect will have no authority to act on behalf of the Owner unless otherwise expressly authorized in writing by the Owner.

§ 4.2.2 Upon the Owner's request, the Architect, and such other consultants retained by the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work or portions thereof observed is being performed in a manner indicating that the Work or portions observed, when fully completed, will be in accordance with the Contract Documents. However, the Owner does not currently intend for the Architect or such other consultants of the Owner to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Architect nor such other consultants of the Owner will have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. Any failure by the Architect or such other consultants of the Owner to inform the Contractor or any observed non-compliance shall not constitute a waiver by Architect or Owner of the right to insist upon compliance by Contractor.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Neither the Owner nor its agents or consultants, including the Architect will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Owner nor its agents or consultants, including the Architect will have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, Sub-subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents, the Architect, Blue Star, and such other persons designated by the Owner shall be copied on all correspondence between the Owner and Contractor. The Owner and Contractor may communicate directly with each other or indirectly through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect

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with the Owner copied on all written communications. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 The Owner reserves the right, upon written notice to the Contractor, to require the Architect or another third-party consultant to review and certify the amounts due the Contractor and issue Certificates for Payment in such amounts based upon its evaluations of the Work and of the Contractor's Applications for Payment.

§ 4.2.6 The Owner reserves the right, upon written notice to the Contractor, to give the Architect (or such other person designated by the Owner) authority to reject Work that does not conform to the Contract Documents. In such event, whenever the Architect or such other person designated by the Owner considers it necessary or advisable, the Architect or such other designated person will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect (or such designated person) nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or such designated person to the Contractor, Subcontractors, Sub-subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect (or such other person designated by the Owner) will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The action by the Architect (or such other person designated by the Owner) will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect or such other person designated by the Owner. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The review hereunder of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The review hereunder shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect or such other person designated by the Owner, of any construction means, methods, techniques, sequences or procedures. The approval hereunder of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 Except as otherwise directed by the Owner or as required by the Contract Documents, the Contractor will prepare Change Orders for the Owner's approval. Construction Directives may be prepared by either the Owner or the Architect (with the Owner's approval).

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

§ 4.2.10 *[Intentionally deleted.]*

§ 4.2.11 Upon the Owner's request, the Architect will initially interpret and decide matters concerning performance under, and requirements of, the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 *[Intentionally deleted.]*

§ 4.2.13 *[Intentionally deleted.]*

§ 4.2.14 The Architect (or such consultant or other person designated by the Owner) will review and respond to requests for information about the Contract Documents. The response by the Architect (or such other person designated by the Owner) to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect (or such other design professional designated by the

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Owner) will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 Notwithstanding any other provision of this Agreement to the contrary, the Architect (or such other design professional designated by the Owner) shall have no authority to order or approve any material deviation from the Contract Documents, whether or not such deviation affects the Contract Sum or other Substantial Completion Date (as defined herein). In the event any such deviation is sought, prior written approval from Owner must be obtained.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" includes suppliers of materials, tools, consumables, equipment, or systems and entities renting equipment, tools or other items but does not include a separate contractor or subcontractors of a separate contractor. The term "Subcontract", whether capitalized or not, includes Purchase Orders and other supply contracts.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor", whether capitalized or not, is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor of any tier or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" includes suppliers of materials, tools, consumables, equipment, or systems and entities renting equipment, tools or other items to a Subcontractor or another Sub-subcontractor.

§ 5.1.3 Contractor shall promptly notify Owner, Blue Star, and Architect of any material defaults by any Subcontractor or Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after the GMP Amendment has been entered into by the parties, shall furnish in writing to the Owner, Blue Star, and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) with whom Contractor has subcontracted or intends to subcontract for each portion of the Work.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection and who has not been selected pursuant to the subcontractor bidding process required by the Agreement and Applicable Laws. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will

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similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Related Party Subcontractor. The Contractor shall not enter into any subcontract, contract, agreement, purchase order or other arrangement for the furnishing of any portion of materials, services, equipment or work with any party or entity if such party of entity is a Related Party (as defined in the Agreement), unless such arrangement has been approved by the Owner in writing, after full disclosure in writing by Contractor of such affiliation and Contractor has complied with the requirements of the Agreement relating to Related Parties. The term Related Party includes any entity related to or affiliated with the Contractor, its employees, agents, partners or shareholders, if any, has direct or indirect ownership or control.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 (except as provided in Section 5.4.4 below) and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement under this Section 5.4.1, the Owner assumes the Contractor's rights and obligations under the subcontract with regard to the Work to be performed after the acceptance of the assignment.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than sixty (60) days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Notwithstanding the foregoing, in the event of a termination for convenience under Section 14.4 below, Contractor's rights under each subcontract agreement with regard to the respective subcontractor's obligation to correct defective or non-conforming work or with regard to the subcontractor's warranty obligations for portions of the Work performed by the subcontractor are assigned by the Contractor to the Owner in the event of such termination.

5.5 NOTICE OF MATERIAL DEFAULT / NO CLAIM BY SUBCONTRACTOR AGAINST OWNER

Contractor shall promptly notify Owner, Blue Star, and Architect of any material defaults by any Subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any subcontractor or other materialman or workman employed by Contractor to create a lien or to obtain a personal judgment against Owner for the amount due from the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under contracts with substantially similar provisions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

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

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

§ 6.2.3 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.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

§ 7.1.2 A Change Order shall be based upon agreement between the Owner and Contractor (which may or may not be agreed to by the Architect); a Construction Directive may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Owner alone pursuant to Section 7.4 below.

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

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§ 7.1.4 The Contractor, upon receipt of written notification by the Owner of a proposed item of change in the Work, shall prepare and deliver to the Owner, Blue Star, and the Architect, as soon as possible, a Change Proposal in such form or forms as directed by the Owner or the Architect and in accordance with the following:

.1 Each Change Proposal shall be numbered consecutively and shall include material's costs, labor costs, fees, and other reimbursable Cost of the Work and any applicable Fee or profit. The Change Proposal shall specify all costs related to the proposed Change in the Work, including any disruption or impact on performance.

.2 The Subcontractor's itemized accounting shall be included with the Change Proposal.

.3 If Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Owner.

.4 A revised Change Proposal shall bear a new Change Proposal number but shall cross-reference the previous Change Proposal.

.5 Upon written approval of a Change Proposal by the Owner, the Contractor (or the Architect if otherwise required by the Contract Documents or directed by the Owner) will prepare a Change Order authorizing such change in the Work on such form as directed by the Owner.

.6 The Contractor shall request extensions of Contract Time, if any, due to changes in the Work only at the time of submitting his Change Proposal. Contractor's failure to do so shall represent a waiver of any right to request a time extension.

.7 The Contractor shall maintain such Change Order log (with Change Proposals) in such form as directed by Owner.

§ 7.1.5 Except as permitted in the Agreement or these General Conditions with regard to amounts to which Owner is entitled to payment or offset arising from Contractor's breach or default hereunder, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Directive or Change Order. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument (which may or may not be prepared or agreed to by the Architect) signed by the Owner and the Contractor stating their agreement upon all of the following:

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum; and

.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Unless otherwise provided in the Change Order, agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

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§ 7.3 CONSTRUCTION DIRECTIVES

§ 7.3.1 A Construction Directive (also referred to in the Contract Documents as a "Construction Change Directive" or "Change Directive") is a written order (which may or may not be prepared or agreed to by the Architect) signed by the Owner, directing a change in the Work or the performance of Work which Contractor disputes as being included in its scope of the Work under the Contract Documents ("disputed Work") prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Directive, without invalidating the Contract, order changes in the Work or the performance of disputed Work consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly (to the extent such adjustment is required by the Contract Documents).

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

§ 7.3.3 If the Construction Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation with the applicable mark-up as may be authorized under the Agreement;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties with the applicable mark-up as may be authorized under the Agreement; or
- **.4** As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Directive, the Contractor shall promptly proceed with the change in the Work involved (or the directed Work) and advise the Architect and the Owner and Blue Star of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

§ 7.3.7 If the Contractor does not object in writing to the Owner and Blue Star within fifteen (15) calendar days after receipt of the Construction Directive, such Directive shall be deemed accepted by the Contractor and shall be effective and recorded as a Change Order. If the Contractor disagrees with the method for adjustment in the Contract Sum and timely and properly objects, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, subject to such provisions for adjustments to the Contract Sum as provided in the Contract Documents and as further limited immediately below, including, in case of an increase in the Contract Sum, with the applicable mark-up as may be authorized in the Agreement. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following and shall be subject to such terms and conditions regarding **Change Order Pricing** as may be provided in the Agreement (which terms and conditions shall control over the provisions hereof, to the extent in conflict):

- **.1** Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement, and workers' compensation insurance, or, with regard to Contractor's benefits costs, such labor burden as may be expressly recoverable under the Agreement in lieu thereof;
- **.2** Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- **.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

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.4 Costs of additional premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 Except as otherwise provided in the Agreement, the amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost (computed in accordance with any applicable requirements for Change Order Pricing). When both additions and credits covering related Work or substitutions are involved in a change, the allowance for profit (Fee) shall be figured on the basis of net change in the Contract Sum, if any, with respect to that change, to the extent such change in Fee is authorized by the Agreement.

§ 7.3.9 Pending final determination of the total cost of a Construction Directive to the Owner (or a determination of the Contractor' entitlement to compensation for disputed Work), the Contractor may request payment for Work completed under the Construction Directive in Applications for Payment. The Owner will make an interim good faith determination for purposes of monthly certification for payment for those costs. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Owner 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 will be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work and any Critical Milestones established in the Contract Documents and any requirements relating to the time for Final Completion of the Work.

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

§ 8.1.3 Final completion is the actual completion of the Work (or applicable portion thereof) in accordance with the Contract Documents, including any Work covered by Change Directives and Change Orders issued under the Contract, other than warranty work on Work that has previously been accepted by the Owner.

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

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement (or Amendment to the Agreement which authorizes the Contractor to commence construction of the Work) the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner and Blue Star in writing not less than five days or other agreed period before commencing the Work.

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

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§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Blue Star, or Architect, or of an employee of either, or of a separate contractor or consultant employed by the Owner; or by changes ordered in the Work (not caused or resulting from the failure of Contractor or its Subcontractors or Sub- subcontractors to comply with their obligations arising under the Contract); or by labor disputes (not arising from the labor practices of Contractor or its Subcontractors or Sub-subcontractors), fire (not caused by Contractor or its Subcontractors or Sub-subcontractors); unusual delay in deliveries (not attributable to or caused by Contractor or its Subcontractors or Sub-subcontractors), unavoidable casualties or other causes beyond the control and reasonable ability to avoid by the Contractor or its Subcontractors or Sub-subcontractors (such causes are collectively referred to in the Contract Documents as causes "not the fault of the Contractor"), then the Contract Time shall be extended by Change Order by the number of days by which the critical path to completion of the Project has been delayed by the event giving rise to the right to an extension. Notwithstanding the foregoing, the Contractor acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay to the Critical Path (1) is not caused, or could not have been reasonably anticipated and mitigated, by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and (3) is in addition to any time contingency periods set forth in the critical path for completion of the Work.

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

§ 8.3.3 Nothing herein shall authorize the Contractor to recover an increase in the Contract Sum (i.e., the GMP if the Agreement is a Cost Plus Contract with a GMP) as a result of price escalations in the marketplace or price increases due to labor or materials shortages or to recover such increases in excess of the Contract Sum.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.1.1 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder of and for so long as the Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided, however, that any such holdback shall be limited to a reasonable amount sufficient, in the good faith opinion of the Owner, to cure any such default or failure to perform by the Contractor. If the Contractor disputes Owner's determination, he shall nevertheless expeditiously continue to prosecute the Work.

§ 9.2 SCHEDULE OF VALUES

Unless the Schedule of Values is attached to the Agreement as an Exhibit, the Contractor shall submit to the Owner and Blue Star, as soon as feasible after full execution of the Agreement and before the first Application for payment, a Schedule of Values fairly allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as required by the Contract Documents or as otherwise reasonably required by the Owner. The Schedule of Values shall be prepared in such a manner that each major item of work and each subcontracted item of work is shown as a single line item on AIA Document G703, Application and Certificate for Payment, Continuation Sheet or other form acceptable to Owner. Once approved by the Owner and updated for changes in the Work, the Schedule of Values shall be used only as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The Schedule and any modifications or amendments thereto shall not overvalue early job activities. Except as otherwise agreed in writing by the parties, the Contractor's Reimbursable Conditions Costs and Contractor's Fee shall be included as separate line items. The schedule shall follow the trade divisions of the Specifications so far as practicable. Any modifications or amendments thereto must be approved by the Owner.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Based upon Applications for Payment submitted to the Owner and the Architect by the Contractor and Certificates for Payment issued by the Architect (if so required by the Owner), the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and in the Agreement.

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§ 9.3.1.1 Without limiting the foregoing, the Contractor shall submit to the Owner and the Architect an itemized Application for Payment prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as required by the Agreement or as the Owner may otherwise reasonably require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, 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 suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Applications for Payment have been previously submitted and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, Sub-subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor further warrants that it shall acquire no Work, materials, or equipment whether directly or through a Subcontractor or Sub-subcontractor, subject to an agreement under which a lien (other than the mechanic's or contractor's lien arising under Applicable Law) is retained by the seller or otherwise imposed by the Contractor, any Subcontractor or Sub-subcontractor, or any other person or entity. The Contractor shall defend the Owner, at the Contractor's sole cost and expense, against any actions, lawsuits, or proceedings brought against the Owner as a result of liens filed against the site of the Project or otherwise, except to the extent that such liens arise due to the Owner wrongfully withholding payment. The Contractor shall indemnify, defend, and hold harmless the Owner against any such liens or claims for lien and agrees to pay any judgment or lien against the Owner or the Owner's property resulting from any such actions, lawsuits or proceedings brought to enforce any such lien or claim.

§ 9.3.4 With each Application for Payment, and as a condition to such payment by the Owner, Contractor shall submit a lien waiver/release and bills paid affidavit from Contractor and such Subcontractors performing Work during the period covered by the Application for Payment as required by the Agreement.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 If the Owner requires certification of payment requests by the Architect, the Architect will, within ten (10) days after receipt of the Contractor's Application for Payment (or such longer period as may be required for final payment in the Agreement), 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 in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of

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subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The issuance of a Certificate for Payment by the Architect shall constitute a recommendation to the Owner in respect to the amount to be paid. This recommendation is not binding on the Owner if, in Owner's opinion, legitimate reasons for nonpayment exist including, but not limited to the reasons set out in Section 9.5.1. If the Owner declines to make payment upon a Certificate of Payment, the Owner shall promptly notify the Contractor of the reasons therefor.

§ 9.5 DECISIONS TO WITHHOLD PAYMENT

§ 9.5.1 The Architect may withhold a Certificate for Payment and an Owner may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.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 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.

§ 9.5.2 When the above reasons for withholding certification for payment or for payment are removed, payment will be made for amounts previously withheld (although Owner may require Contractor to submit an Application for Payment covering such previously withheld payment).

§ 9.5.3 If the Owner is entitled to withhold payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.5.4 If Contractor disputes any determination by Owner with regard to all or any part of an Application for Payment or a Certificate of Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work but shall be entitled to make a Claim as provided in Article 15.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 The Owner shall make payment in the manner and within the time provided in the Contract Documents.

§ 9.6.2 Consistent with Section 12.1.8.1, the Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner and Blue Star have the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. Without limiting the foregoing, the Owner and Blue Star) shall have the right to contact Subcontractors and Sub-subcontractors, including material and equipment suppliers, to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor or Sub-subcontractor, except as may otherwise be required by law.

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

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

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Owner does not pay the Contractor within ten (10) days after the date established in in the Agreement for payment, subject to Owner's right to withhold payment as set out in Subsection 9.5.1 above or awarded by binding dispute resolution, then the Contractor may, after giving written notice to the Owner and Blue Star no less than the minimum number of days as required by Applicable Law and otherwise strictly complying with the requirements of Section 2251.051 of the Texas Government Code, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made within thirty (30) days of written demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 In addition to such other requirements and conditions as set forth in the Agreement, 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 such Work for its intended use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed). In general, the only remaining Work shall be minor in nature, so that the Owner could occupy and utilize the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations and the "Substantial Completion List of Deficiencies" (also commonly referred to as the "punchlist") may be completed within the time periods as established in the Agreement, if any, and in no event within a period of time greater than 30 calendar days following the Substantial Completion Date.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and the Owner and Blue Star a comprehensive list of items to be completed or corrected prior to final payment ("Contractor's Proposed

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Substantial Completion List of Deficiencies". Failure to include an item on such List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, upon request by the Owner, the Contractor will prepare and execute a Certificate of Substantial Completion that shall set out the agreed upon date of Substantial Completion and responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall 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 agreed to by the Owner pursuant to Section 9.8.5.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Architect for its certification of Substantial Completion (if required by the Owner) and to the Owner for its written approval (if the Owner agrees thereto), with a copy to Blue Star. Upon such written approval by the Owner, the Architect (if required by the Owner), and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and the Owner and Blue Star as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect (if required by the Owner) and the Owner and Blue Star will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will make the final payment as provided by the Contract Documents. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Owner as part of the final Application for Payment. The final payment will not be made by the Owner until all warranties and guarantees have been received and accepted by the Owner.

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§ 9.10.2 Except as otherwise required by the Agreement, neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner and Blue Star, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, and (5) such other data and documentation required by the Agreement establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form acceptable to the Owner.

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

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

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents;
- **.4** matters previously identified by the Owner that remain unsettled at the time of making final payment; or
- **.5** any matter which was not known to or reasonably discoverable by the Owner at the time of making final payment.

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

§ 9.10.6 Except as otherwise provided in the Agreement, records of reimbursable expenses and costs incurred by the Contractor and for which payment is sought or received from Owner for Work performed or to be performed hereunder on a "time and material" or "cost-plus" basis shall be made available to Owner for its reasonable review and examination. Such records shall be preserved by the Contractor and made available to the Owner for a period of at least three years after final completion of the Work.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

As between the Owner and the Contractor, the Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Where consideration of labor, equipment or safety is involved, Contractor is solely responsible for all decisions, and Owner shall not incur any liability as a result of Contractor's decisions.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

- **.1** employees on the Work and other persons who may be affected thereby;

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.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 or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by Applicable Law, including all applicable statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

§ 10.2.4 When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner and Blue Star reasonable advance notice thereof and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other such hazardous materials or equipment is necessary, the Contractor shall give Owner a written request. No work shall proceed involving such storage or use unless previously approved in writing by the Owner.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.6.1 Without limiting any other requirement hereunder regarding safety, Contractor shall bear responsibility for designing and execution of acceptable trenching and shoring procedures, in accordance with Applicable Law, including Sections 756.021, *et seq.* of the Texas Health and Safety Code.

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY
The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

§ 10.2.9 The performance of the services by the Contractor set forth in this Article 10 shall not relieve the Subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work or the Project.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

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§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials.

For purposes of this Section 10.3, the term "Hazardous Materials" shall mean all pollutants, contaminants, chemicals, and any other carcinogenic, ignitable, corrosive, reactive, toxic, or otherwise hazardous substances subject to regulation, control, or remediation under applicable federal, state or local environmental laws or regulations, including without limitation, substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," "toxic substances" or "solid wastes" in the Comprehensive Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et. Seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 2601, et. Seq.; and any other applicable laws and regulations and all amendments and revisions thereto.

If the Contractor encounters a Hazardous Material 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 Hazardous Material, 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 report the condition to the Owner, Blue Star, and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the Hazardous Material reported by the Contractor and, in the event such Hazardous Material is found to be present, to cause it to be rendered harmless. When the Hazardous Material 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 (as reimbursable under the Contract Documents) of shut-down, delay and start-up.

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

§ 10.3.4 Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Materials, except in accordance with Applicable Law. Further, in performing the Work, Contractor shall not cause any release of Hazardous Materials into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water unless required by the Contract Documents. In the event Contractor engages in any of the activities prohibited in this Section 10.3 or fails to stop work as provided in Section 10.3, to the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the Indemnified Parties and their respective officers, agents, employees, and tenants from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incident to or resulting from the activities prohibited in this Section 10.3 or Contractor's failure to stop work as required.

Contractor shall obtain from manufacturers and furnish to Owner Material Safety Data Sheets (OSHA Form 20) for all Hazardous Materials incorporated into the Project by the Contractor.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7, provided the Contractor shall not be entitled to additional compensation or an extension of time if an emergency is caused by the negligence or failure to fulfill a specific responsibility of the Contractor to the Owner set forth in the Contract Documents or the failure of the Contractor's personnel to supervise adequately the Work of the Subcontractors or suppliers.

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ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as expressly required by the insurance requirements in the Agreement and as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or Sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** Claims for bodily injury or property damage arising out of completed operations; and
- **.8** Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 and the Agreement shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Notwithstanding the foregoing, such coverage required hereunder shall not be written on a claims-made basis without the express written consent of the Owner.

§ 11.1.3 Certificates of insurance acceptable to the Owner and in accordance with the requirements of the Agreement shall be filed with the Owner (with a copy to Blue Star) prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 Without limiting any rights set out in the Agreement, the Owner and the "Indemnified Parties" shall be added as an additional insured on general, auto, umbrella and all other liability policies, including completed operations coverage, required to be carried and maintained hereunder by Contractor excepting workers' compensation/employer's liability. All such liability policies carried and maintained by Contractor must be endorsed to be primary to any liability insurance policies carried by Owner with respect to Contractor's operations hereunder. Waivers of Subrogation shall be provided in favor of Owner and the "Indemnified Parties" on general, auto, workers' compensation/employers, and excess policies carried and maintained by Contractor.

§ 11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article 11 or the insurance requirements in the Agreement, Owner may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

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§ 11.1.6 When any required insurance, due to the attainment of a normal expiration date or renewal date shall expire, the Contractor shall supply the Owner and Blue Star with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner and Blue Star with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 11.2 OWNER'S LIABILITY INSURANCE
The Owner shall be responsible for purchasing and maintaining such liability insurance as Owner deems necessary.

§ 11.3 PROPERTY INSURANCE
§ 11.3.1 The party required to furnish Builders Risk Insurance (if any) as set out in the Insurance and Surety Requirements attached to the Agreement and incorporated therein shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, Blue Star, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance (if required by the Contract Documents) shall conform to the requirements set forth in the Insurance and Surety Requirements attached to the Agreement and incorporated therein. In the event that Owner is required to furnish property insurance under this Section 11.3, such property insurance provided by the Owner shall not cover any tools, apparatus, machinery, hoists, and similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor under this Section 11.4 shall include a waiver of subrogation in accordance with the requirements of Section 11.3.7.

§ 11.3.1.2 *[Intentionally deleted.]*

§ 11.3.1.3 Contractor shall be responsible for losses within its deductibles (up to a maximum of $10,000 per claim) to the extent such loss resulted from the negligence of Contractor or its Subcontractors (of any tier).

§ 11.3.1.4 *[Intentionally deleted.]*

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE
Unless expressly required by the insurance requirements in the Agreement, the Owner shall not be required to purchase and maintain boiler and machinery insurance.

§ 11.3.3 LOSS OF USE INSURANCE
The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. If the Owner purchases such insurance,

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Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused to the extent (1) of actual recovery of any insurance proceeds under policies obtained pursuant to Section 11.3 and (2) permitted by the applicable policies of insurance.

§ 11.3.4 *[Intentionally deleted.]*

§ 11.3.5 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, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the party required to furnish the Builders Risk Insurance (if any) under the Insurance and Surety Requirements attached to the Agreement and incorporated therein shall file with the other party a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the other party.

§ 11.3.7 WAIVERS OF SUBROGATION
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, including Blue Star, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, 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 of actual recovery of any insurance proceeds under any property insurance required to be obtained by the Contract Documents, except such rights as they have to proceeds of such insurance held by the Owner in good faith. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 Any insured property loss or claim of loss covered by insurance procured by Owner shall be adjusted by the Owner, and any settlement payments shall be made payable to the Owner as trustee for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause. Upon the occurrence of an insured loss or claim of loss, monies received will be held by Owner who shall make distribution in accordance with an agreement to be reached in such event between Owner and Contractor. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be submitted to a court of competent jurisdiction to determine ownership of the disputed amounts, but the Work of the Project shall nevertheless progress during any such period of dispute without prejudice to the rights of any party to the dispute, provided, however, the timing of the lawsuit shall not be governed by the Claims provision set out herein. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 The Owner shall deposit in a separate account proceeds so received from the adjustment of a loss, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner shall have power to adjust and settle, in good faith, a loss with insurers providing coverage procured by Owner.

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§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 If required by the Contract Documents, the Contractor shall furnish a Performance Bond and a Payment Bond meeting all applicable requirements of state law, written by a surety on bond forms satisfactory to the Owner and, without limitation, complying with the specific requirements stated below and in the Contract Documents. Each bond shall be in a penal sum which is not less than the Contract Sum.

§ 11.4.2 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.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's or Owner's examination at the Contractor's expense (not chargeable to the Contract Sum) and be replaced without change in the Contract Time or Contract Sum (subject to applicable limitations in the Agreement on reimbursement for Cost of the Work).

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request in writing to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs of uncovering shall be at the Contractor's expense (not chargeable to the Contract Sum) and the cost of correction and/or replacement shall be without change in the Contract Time or Contract Sum (subject to applicable limitations in the Agreement on reimbursement for Cost of the Work), unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner 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 without change in the Contract Time or Contract Sum (subject to applicable limitations in the Agreement on reimbursement for Cost of the Work) to the extent incurred prior to final payment and at the Contractor's expense (not chargeable to the Contract Sum or otherwise reimbursable from Owner) after final payment. If prior to the date of Substantial Completion, the Contractor, a Subcontractor or Sub-subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work (or any longer period expressly required by the Agreement) 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 written notice from the Owner to do so unless the Owner has previously given the Contractor an express, written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If any of the Work is found to be not in accordance with the requirements of the Contract Documents during the required period for correction of the Work and if the Owner fails promptly thereafter to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the right to require correction by the Contractor except when emergency repairs are necessary to prevent further damage to the Work or damages to the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. Nothing herein shall be construed to

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negate or limit Contractor's obligations set forth in Section 3.18 above, including without limitation Contractor's duties to defend and indemnify the Indemnified Parties.

§ 12.2.2.2 Contractor shall maintain a complete and accurate schedule of the dates upon which the corrective periods or express warranties will expire. Contractor agrees to provide notice of the warranty expiration date to Owner, Blue Star, and Architect at least one (1) month prior to the expiration of each such applicable corrective / warranty period. Prior to termination of the one year corrective / warranty period required in Section 12.2.2.1 above, Contractor shall accompany the Owner and Blue Star and the Architect (if requested by Owner) on re-inspection of the improvements or building(s) covered thereby and shall be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the respective improvements or building which are observed or reported during the re-inspection. For extended warranties expressly required by the Contract Documents (i.e., roofing, compressors, mechanical equipment), Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within five (5) days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner and the Architect (if retained by the Owner for such purpose), even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year corrective / warranty period at least one (1) month prior to the expiration date, Contractor's correction / warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 12.2.2.3 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. Any corrective work performed or to be performed under or pursuant to Section 12.2 shall be warranted to the same extent as the Work is warranted hereunder for the greater of the remainder of the applicable warranty period or ninety (90) days from the date such corrective work has been completed.

§ 12.2.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work, Owner may remove such nonconforming Work and store the salvageable materials or equipment and charge the cost thereof to the Contractor. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, Owner may upon ten (10) additional days written notice sell such materials and equipment at auction or at private sale, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, Contractor shall pay the difference to the Owner.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the required period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the nonconforming or defective Work that was discovered or reasonably discoverable during the one year corrective period established herein.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

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ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign the Contract as a whole without written consent of the Owner, nor shall Contractor assign any monies due or to become due to it hereunder without the written consent of the Owner. If Contractor attempts to make such an assignment without such consent, such purported assignment shall constitute a material breach of the Contract. Notwithstanding the foregoing, Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 Without limiting the foregoing, Contractor acknowledges and agrees that Owner may, without consent of the Contractor, assign the Contract to Owner's Lender providing construction financing for the Project (if any), if the lender assumes the Owner's rights and obligations under the Contract Documents with regard to the Work to be performed after such assignment. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.2.3 If the Owner leases, sells or conveys all or any portion of the real property on which the improvements were constructed under the Contract Documents to another person or entity, any rights with respect to the property so leased, sold or conveyed which the Owner may have against the Contractor under Section 3.5 or Article 12 or by virtue of claims or rights which are reserved to the Owner after the making and acceptance of final payment or that arise from such provisions that survive completion or termination of the Contract, shall automatically transfer to such person or entity, subject to any defenses which the Contractor may have against the Owner. Nothing herein shall be construed to negate or limit Contractor's obligations set forth in Section 3.18 above, including without limitation Contractor's duties to defend and indemnify the Indemnified Parties.

§ 13.3 WRITTEN NOTICE

Except as expressly provided to the contrary in the Agreement, written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 Except as expressly provided in the Contract Documents, no action or failure to act by the Owner, Blue Star, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by Applicable Law, including all applicable statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect, Blue Star, and Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or Applicable Law prohibit the Owner from delegating their cost to the Contractor.

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§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Owner will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect, Blue Star, and the Owner of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

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

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

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

§ 13.6 INTEREST
[See applicable terms, if any, in Agreement.]

§ 13.7 TIME LIMITS ON CLAIMS
The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by Applicable Law.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT
§ 14.1 TERMINATION BY THE CONTRACTOR
§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons, subject to the requirements and provisions of Section 14.1.3 below:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- **.3** The Contractor is entitled to and has suspended performance in accordance with Section 9.7 above; or
- **.4** The Owner has failed to furnish to the Contractor, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, subject to the requirements and provisions of Section 14.1.3 below.

§ 14.1.3 If the Work has been suspended or delayed for one of the reasons described in Section 14.1.1 or 14.1.2 for a period of at least 30 consecutive days, the Contractor may, upon ten (10) days' additional written notice to the

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Owner, Blue Star, and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.5, but only if the basis for the suspension, delay or interruption has not been removed or cured within such additional ten (10) day period after giving notice of intent to terminate.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has otherwise repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work (other than Owner's failure to make payment under Article 9 above), the Contractor may, upon ten (10) additional days' written notice to the Owner, Blue Star, and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.5, but only if the basis for such termination has not been removed or cured prior to the effective date of termination.

§ 14.1.5 In the event of a termination by Contractor under this Section 14.1, Contractor shall recover from the Owner only such amount that would be recoverable from the Owner in the event of the Owner's termination for convenience under Subsection 14.4.3 below.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if

- **.1** the Contractor repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** the Contractor fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- **.3** the Contractor repeatedly disregards Applicable Law, including all applicable statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- **.4** the Contractor is otherwise guilty of substantial breach of a provision of the Contract Documents;
- **.5** the Contractor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors;
- **.6** the Contractor files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding; or a receiver or trustee is appointed for all or a significant portion of the assets of Contractor;
- **.7** the Contractor actually or constructively abandons, or puts Owner on actual or constructive notice that it intends to abandon, the Project; or
- **.8** the progress of construction is such that Owner reasonably believes that the Contractor shall not be able to achieve Substantial Completion within thirty (30) days following the Date of Substantial Completion required by the Agreement and Contractor has not delivered and implemented a recovery plan as required under the Agreement or has not recovered the schedule sufficient to meet the respective Contract Time requirements within thirty days after written notice to Contractor by Owner. Without limiting the foregoing, Owner shall be deemed to have a reasonable belief that the Contractor shall not be able to achieve Substantial Completion by the date required pursuant to the preceding sentence if the Contractor shall fail to achieve a Critical Milestone (as defined in the Agreement) within thirty (30) days of the date for such Critical Milestone as set forth in the Schedule of the Work.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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§ 14.2.3 After any termination of this Contract by Owner pursuant to this Subsection 14.2, Contractor shall not be entitled to any further payment except to the extent of any amount by which Work completed or installed by Contractor prior to such termination and not previously paid for by Owner exceeds the amount due by Contractor to Owner under this Section 14.2 (including all damages which Owner would be entitled to recover at law from Contractor by reason of Contractor's breach), and even then only at such time as the Work is finally completed. It is expressly agreed that pursuit by Owner of any one or more of the remedies provided herein or otherwise available at law or in equity shall not constitute an election of remedies by Owner, nor shall forbearance by Owner to enforce one or more of the remedies provided herein upon an event of default by Contractor be deemed or construed to constitute a waiver of such default.

§ 14.2.4 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. This obligation for payment shall survive termination of the Contract.

§ 14.2.5 It is recognized that: (1) if an order for relief is entered on behalf of the Contractor pursuant to Title 11 of the United States Bankruptcy Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of its creditors, or (5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of the Contractor or its successor interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and shall entitle the Owner to the accompanying rights set forth above in Subsections 14.2.1 through 14.2.4 hereof. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit only as expressly authorized by the Agreement. No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In the event of a termination under Section 14.4, Contractor shall, as Contractor's sole and exclusive remedy, be paid for (i) the Work properly executed in accordance with the Contract Documents prior to the effective date of termination, as measured by the Contract Sum, and (ii) the direct, actual, and unavoidable (by exercising

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reasonable care) costs incurred by Contractor in terminating the Work, including the cost of canceling subcontracts and purchase orders not assumed by Owner and other such out-of-pocket costs incurred by Contractor to third parties with respect to termination of this Contract. Owner shall not be responsible for damages other than those expressly provided in this subsection and specifically shall not be responsible for any lost profits or reimbursement for overhead on the Work not performed. The amounts owing by Owner to Contractor pursuant to this Subsection shall be as specified in Contractor's final Application for Payment approved by Owner. In addition to payment for the Work performed prior to the effective date of termination and for any Work performed following the date of termination pursuant to Owner's written request, Contractor shall be entitled to payment for materials timely fabricated off the Project site and delivered and stored in accordance with the Owner's instructions.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

For purposes of Section 15.1, a Claim is a demand or assertion by the Contractor seeking from the Owner, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question which the Contractor may have or assert against the Owner arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by the Contractor must be initiated by written notice (the "Notice of Potential Claim") to the Owner and Blue Star within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later; provided, however, that the Contractor shall use its best efforts to furnish the Owner and Blue Star, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Owner and Blue Star in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. The Notice of Potential Claim shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice, the Notice shall be amended at the earliest date this is reasonably possible. Any Claim or portion of a Claim that has not been made the specific subject of a Notice strictly in accordance with the requirements of this Article shall be waived. The parties acknowledge that it is imperative that the Owner and Blue Star have timely, specific notice of any potential problem in order that the problem can be mitigated promptly and economically.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum (and such increase is recoverable under the Contract Documents), written notice as provided herein shall be given before proceeding to execute the Work. Without limiting the requirements of Section 15.1.2, such notice shall include, to the extent then-known by the Contractor, full details and substantiating data to permit evaluation by Owner, Blue Star, and the Architect. If further or other information subsequently becomes known to the Contractor, it shall be promptly furnished to the Owner, Blue Star, and Architect in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.4.1 Except as otherwise provided in the Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

.1 No indirect or consequential damages will be allowed.

.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

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.4 No damages will be allowed for home office overhead or other home office charges or any Eichlay formula calculation.

.5 No profit will be allowed on any damage claim, except as expressly recoverable under the Agreement.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.2 above (the Notice) shall be given. The Contractor's Notice shall include an estimate of cost (to the extent recoverable under the Contract Documents) and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary; provided, however, that the Contractor shall provide to the Owner, Blue Star, and Architect, promptly upon request, additional information regarding the status of such delay. Any change in the Contract Time resulting from such Clam shall be authorized by a Change Order in accordance with the provisions of Section 7.2. In any claim by Contractor for any increase in the Contract Time or the Contract Sum, if permitted in the Contract Documents, Contractor shall demonstrate that the event giving rise to the claim was beyond the Contractor's control and would not have been avoided by an experienced, competent Contractor under similar circumstances and that Contractor has provided Owner and Blue Star with such notice as required herein and has cooperated with Owner to make reasonable efforts to mitigate any delay.

§ 15.1.5.2 Consistent with the requirements of section 8.3, if adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by reasonable, reliable data substantiating that weather conditions were abnormal for the period of time and resulted in delays to the Critical Path in excess of such days as set forth in the Project Schedule.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES *[Intentionally deleted. See Sec. 15.1.4.1.1 above.]*

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision only if the parties agree to the appointment of an Initial Decision Maker. If the parties agree to the appointment of an Initial Decision Maker, and except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation or litigation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 If the parties agree to the appointment of an Initial Decision Maker, the Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party.

§ 15.2.4 If the parties agree to the appointment of an Initial Decision Maker and the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Guaranteed Maximum Price or Contract Time or both.

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§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.3 MEDIATION
[Intentionally deleted. See Sec. 9.1 of the Agreement.]

§ 15.4 ARBITRATION
[Intentionally deleted. See Sec. 9.1.3 of the Agreement.]

* * * * * * *

These General Conditions of the Contract for the construction of the Project are entered into as of the effective date of the Agreement.

OWNER:

By: _____

Name: _____

Title: _____

CONTRACTOR [CONSTRUCTION MANAGER]:

By: _____

Name: _____

Title: _____

DRAFT

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EXHIBIT E

Facilities Lease

AMENDED AND RESTATED

FACILITIES LEASE AGREEMENT

Between

CITY OF FRISCO

And

BLUE STAR STADIUM, INC.

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AMENDED AND RESTATED

FACILITIES LEASE AGREEMENT

THE FACILITIES LEASE AGREEMENT (the "Lease") dated on the 4th day of December, 2013 is hereby amended and restated to be effective as of the _____day of _____, 2016, by and between the City of Frisco, Texas, a municipal corporation of the State of Texas and a home rule city (the "Lessor" or "City") and Blue Star Stadium Inc., a Texas corporation (the "Lessee"). Lessor and Lessee sometimes are referred to herein collectively as the "Parties" or singularly as a "Party".

RECITALS

A. Lessor and Lessee have heretofore entered into an Amended and Restated Master Development Agreement, dated as of even date herewith ("Development Agreement"), providing for the acquisition, construction, and operation of the Stadium, outdoor football practice facilities and Parking Facilities and related facilities (the "Facilities", as defined in the Development Agreement).

B. Pursuant to the terms of the Development Agreement, Lessor has agreed to lease the Facilities to Lessee on the terms and conditions set forth herein, this Lease being the "Facilities Lease" referenced in the Development Agreement.

C. Lessor desires to lease to Lessee, and Lessee desires to lease and take from Lessor, the Leased Premises on the terms set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed by each or the Parties hereto, the Parties hereto have agreed and, intending to be legally bound, do hereby agree as follows:

ARTICLE 1
GRANT, TERM OF LEASE AND CERTAIN DEFINITIONS

1.1 Leasing Clause. Upon and subject to the terms and provisions contained herein, Lessor does hereby lease, demise and let unto Lessee, and Lessee does hereby take and lease from Lessor, the Leased Premises, to have and to hold the Leased Premises, together with all the rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Leased Premises, for the term and subject to the provisions hereinafter provided.

1.2 Term and Extensions.

(a) The term of this Lease shall commence on August 1, 2016 (the "Commencement Date") and shall terminate on July 31 of the year following the twenty fifth (25th) anniversary of the Commencement Date, unless earlier terminated in accordance with the provisions of this Lease or as extended as provided in (b) below of this Lease.

(b) Lessee, at its option, may extend the Term for one (1) ten year period followed by three (3) five year periods ("Extension Periods") by delivering to Lessor a written notice of extension not later than one hundred eighty (180) days prior to the end of the Term or any then effective extension of the Term, as the case may be. During any extension of the Term as provided above, the rights and obligations of Lessor and Lessee under this Lease shall continue throughout such Extension Period except that the "Term" as used in this Lease shall be extended to include such applicable Extension Period and the Base Rent charged during such Extension Period shall be adjusted as agreed by Lessor and Lessee.

1.3 Certain Definitions. The following terms shall have the meaning set forth in this Section 1.3:

(a) Affiliate. With respect to any person or entity, (a) each person or entity that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the capital stock having ordinary voting power in the election of directors of such entity, (b) each entity that controls, is controlled by or is under common control with such person or entity and (c) in the case of individuals, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of the person. For the purposes of this definition, "control" of a person or entity shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract, by virtue of being an executive officer or a director or otherwise.

(b) AV Taxes. Any and all property taxes and ad valorem taxes assessed against the Leased Premises or Lessee's interest therein that accrue during and are applicable to the Term.

(c) Base Rent. The lease payments for the Leased Premises provided in Article 2 hereof.

(d) City. The City of Frisco, Texas, a municipal corporation of the State of Texas and a home rule city.

(e) City Use. Has the meaning set forth in Section 5.l(b).

(f) Commencement Date. The date first set forth above in Section l.2 of this Lease.

(g) Development Agreement. Has the meaning set forth in the Recitals.

(h) Event of Default. Has the meaning set forth in Section 10.1.

(i) Facilities. Has the meaning set forth in Recital A.

(j) FISD. Frisco Independent School District.

(k) Force Majeure. Any causes beyond a Party's control and without such Party's negligence, including, but not limited to, acts of God, acts of the public enemy, acts of

the Federal Government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, riots, war, acts of terrorism, labor strikes, freight embargoes, casualty, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any governmental or regulatory body, civil disturbance, and unusually severe weather or unforeseen environmental or archaeological conditions requiring investigation/mitigation by federal, state or local laws.

(l) General Fields. Two (2) high quality football practice fields, as more particularly described in the Development Agreement.

(m) Hazardous Materials. Has the meaning set forth in Section 7.7(c).

(n) Impositions. Taxes or assessments against the Leased Premises or Lessee's interest therein that accrue during and are applicable to the Term.

(o) Improvements. All buildings, structures, equipment, improvements, and fixtures, and Related Infrastructure from time to time connected, installed or situated on the Land, including all landscaping and the Parking Facilities.

(p) Land. The certain tract of land situated in the City of Frisco, Collin County Texas, described in Exhibit A attached hereto and made a part hereof for all purposes.

(q) Lease. This Lease Agreement by and between Lessor, as lessor, and Lessee, as lessee, covering the Leased Premises.

(r) Lease Year. Any 12 month period during the Term commencing April l and ending on the next following March 31; save and except the first Lease Year which shall commence on the Commencement Date and end on March 31 of the next following year and the last Lease Year that will end on March 31 following.

(s) Leasehold Mortgage. A mortgage or deed of trust which Lessee grants on its leasehold interest in the Leased Premises.

(t) Leased Premises. The Facilities, the Land, and all other Improvements, together with all other rights, privileges, easements and appurtenances benefiting, belonging to or in any way appertaining thereto, including, without limitation, (a) any and all rights, privileges, easements and appurtenances of Lessor as the owner of fee simple title to the Land now or hereafter existing, (b) subsurface rights below the surface of the Land, (c) reversions which may hereafter accrue to Lessor as owner of fee simple title to the Land by reason of the closing of any adjacent street, sidewalk or alley or the abandonment of any rights by any governmental authority, (d) any and all strips and gores relating to the Land and (e) any and all air rights over and above the Land.

(u) Lessee. Blue Star Stadium Inc., or any assignee thereof as provided in Section 8.1 hereof.

(v) Lessee Event. A Dallas Cowboys football related event or other event, which Lessee schedules in the Facilities, including but not limited to in the Stadium.

(w) Lessor. The City of Frisco, Texas, a duly incorporated home rule city of the State of Texas located in Collin County, Texas.

(x) Lessor Entity. Lessor or any governmental body, agency or political subdivision to whom Lessor's power to levy, assess or collect ad valorem taxes is transferred by law or contract.

(y) Operational Date. The date on which the first event that is open to the general public takes place within the Stadium.

(z) Parking Facilities. A structured parking facility or facilities with a minimum capacity of 2,555 cars as more specifically described in the Development Agreement, which may include one or more structured parking facilities owned by Lessor and located on land adjacent or in close proximity to the Stadium.

(aa) Plans. The Plans relating to the Leased Premises prepared by an architect selected by Lessor that are acceptable to Lessee and are incorporated into the contract entered into between the CM at Risk Firm (as that term is defined in the Development Agreement) and the City in accordance with the Development Agreement.

(bb) Related Infrastructure. Any store, restaurant, concession, automobile parking areas, road, street, water or sewer facility, plaza, pedestrian circulation area, landscaping, exterior lighting, parking and walkways or other improvement on the Land that relates to and enhances the use, value or appeal of the Facilities, including, without limitation, areas adjacent to the Facilities and any items reasonably necessary to construct, improve, renovate or expand the Facilities, excluding environmental remediation.

(cc) School Use. Has the meaning set forth in Section 5.1(c).

(dd) Stadium. A minimum 12,000 seat indoor football stadium and related locker room facilities, concession areas, electronic scoreboard, press box, broadcast booths and suites, and/or club seats, with access to the Parking Facilities, together with all Related Infrastructure.

(ee) Sublessee. Any person or entity to whom or to which Lessee grants or licenses any rights to occupy, use, operate, manage, provide services in or the sale of food, beverages, services, merchandise or sporting goods within the Leased Premises.

(ff) Team. The Dallas Cowboys.

(gg) Term. The term of this Lease as provided in Section 1.2 hereof.

ARTICLE 2.
LEASE PAYMENT

Lessee shall pay the City an annual base rent ("Base Rent") with the first payment being due and payable within 30 days after the Commencement Date and on August 1 of each year thereafter. The Base Rent for the first five years shall be $100,000.00 per year payable annually.

Thereafter, the annual Base Rent shall be adjusted beginning on the fifth (5th) anniversary date of the Term and on every five (5) years thereafter (each five year period including the first five years being an "Adjustment Period") to an amount equal to the greater of (i) the average annual number of paid attendees to Lessee Events during the preceding Adjustment Period multiplied by $2.00, or (ii) $100,000.00 per year.

ARTICLE 3.
IMPOSITIONS, FEES AND UTILITIES

3.1 Payment of Impositions. Except as provided elsewhere in this Article 3, Lessee shall pay all Impositions before the same become delinquent, and Lessee, at the request of Lessor, shall furnish to Lessor receipts or copies thereof showing payment of such Impositions. Lessee shall be entitled to pay any Impositions in installments as and to the extent the same may be permitted by the applicable taxing authority or claimant. Lessor agrees to cooperate with Lessee in seeking the delivery of all notices of impositions to Lessee directly from the applicable taxing authorities. Lessor shall promptly deliver all notices of Impositions to Lessee which are delivered to Lessor. In no event shall Lessee be in default under this Lease for failure to pay any Impositions before the same become delinquent for which the notice of such Impositions shall have been delivered to Lessor and not forwarded or delivered to Lessee at least thirty (30) days before the date the same become delinquent.

3.2 Contest of Impositions. If the levy of any of the Impositions shall be deemed by Lessee to be improper, illegal or excessive, or if Lessee desires in good faith to contest the Impositions for any other reason, Lessee may, at Lessee's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as Lessee shall deem necessary and appropriate. Subject to the foregoing, any item of contested Imposition need not be paid until it is finally adjudged to be valid. Lessee shall be entitled to any refund of any Imposition (and the penalties or interest thereon) refunded by the levying authority pursuant to any such proceeding or contest, if such Imposition shall have been either (a) paid directly by Lessee, or (b) shall have been paid directly by Lessor and Lessor was reimbursed therefor by Lessee.

3.3 Standing. If Lessee determines that it lacks standing to contest any Impositions imposed by a governmental authority other than any Lessor Entity or to obtain an extended payment period for any such non-Lessor Entity Impositions, Lessor (to the maximum extent allowed by law) and at Lessee's expense and request shall join in such contest or otherwise provide Lessee with sufficient authority to obtain such standing.

3.4 Certain Provisions Related to AV Taxes and Impositions. Lessor and Lessee acknowledge that the Leased Premises, other than Lessee's leasehold interest in the Lease and Lessee's leasehold improvements therein, presently are presumed to be exempt from AV Taxes and Impositions under the laws of the State of Texas as of the Commencement Date, and it is the intention of the Parties that during the Term, Lessee not incur any AV Taxes or Impositions relating to the Leased Premises, Improvements, renovations, replacements other than as such AV Taxes or Impositions pertain to Lessee's leasehold interest and leasehold improvements. Lessor, at the request and expense of Lessee, agrees to jointly take and pursue such lawful actions with Lessee, including, if necessary, judicial actions, as may be available, to protect and defend the

title of Lessor in and to the Leased Premises or Lessee's leasehold interest in the Lease, against the levy, assessment or collection of AV Taxes or Impositions. In the event that AV Taxes or Impositions are subsequently imposed upon the Leased Premises or Lessee's leasehold interest in the Lease (other than such AV Taxes or Impositions pertaining to Lessee's leasehold improvements), the parties hereto agree to restructure the Lease, and permit Lessee's assignment of its interest in the Lease, if necessary, in order to preserve or establish the tax exempt status of the Leased Premises and the Lessee's leasehold interest therein as long as the tax exempt status of Lessor's indebtedness and Lessee's economic obligations arising pursuant to the Lease would be the same as they were prior to the change in the tax exempt status.

3.5 Exemption from AV Taxes. If, for any reason, the Leased Premises or interest of Lessor or Lessee in and to any of the Leased Premises should no longer be exempt from AV Taxes by reason of a change of law or otherwise, or any Lessor Entity levies and assesses an AV Tax against the Leased Premises or the interest of Lessee in the Leased Premises, then Lessee shall, to the extent required by Lessor, pay such AV Taxes before they become delinquent, subject to Lessee's right of contest as provided in Sections 3.2 and 3.4 hereof and the Parties' obligation to restructure the Lease as provided in Section 3.4 hereof.

3.6 Utilities. Lessee shall pay all bills for utility service provided to the Leased Premises during the Term. City shall assist Lessee in obtaining the lowest available rates for utilities.

ARTICLE 4.
IMPROVEMENTS

4.1 Improvements, Removals and Replacements. Lessee shall have the right, at its option and expense (subject only to the express restrictions set forth in this Lease) to further develop any and all portions of the Leased Premises and to erect Improvements on the Leased Premises for any lawful purposes, as long as such development does not materially and adversely interfere with the development or use of the Facilities. Any fixtures, materials or equipment installed by Lessee in the Leased Premises which are in addition to the Improvements contemplated in the Plans that have not been purchased by Lessor and that are not otherwise the property of Lessor ("Lessee Improvements") may be removed by Lessee at any time (including, without limitation, upon the termination of this Lease), if such can be done without material damage to the remainder of the Improvements and Lessee agrees to repair any damage caused by such removal, including the patching of holes and the painting thereof. Any Improvements purchased by Lessor or that are otherwise the property of Lessor may not be removed without the consent or Lessor and unless they are replaced with reasonably comparable Improvements. Any proceeds realized from the sale or disposal of such Lessee Improvements shall belong to Lessee. Lessor shall not construct any Improvements on the Leased Premises during the Term without Lessee's consent.

4.2 Capital Expenditures. In addition to the Base Rent and not in lieu thereof, Lessee shall be responsible for all costs associated with the maintenance and operation of the Facilities, including all capital maintenance, Improvements, renovations, and replacements (collectively, the “Capital Expenditures”) deemed necessary to keep any of the facilities at a level and to the standard commensurate with other National Football League practice facilities and other Class A

multi-use events centers in the Dallas/Fort Worth area, subject to the provisions herein relating to casualty damage and condemnation. Lessee shall not be responsible for any Capital Expenditures related to any portion of the Leased Premises that is public infrastructure or is not a part of the Facilities.

4.3 Zoning and Permits. In the event Lessee deems it necessary or appropriate to obtain zoning, site plan approval or any permit from Lessor or any other governmental entity having jurisdiction over the Leased Premises or any part thereof, Lessor, from time to time on request of Lessee and to the extent necessary as fee owner of the Leased Premises, shall execute such documents or join in such petitions, applications and authorizations, as deemed reasonable or necessary by Lessee.

4.4 Personal Property. All personal property installed or situated from time to time in the Leased Premises and paid for by Lessee shall remain the property of Lessee (or any Sublessee installing same) except for such items of personal property as Lessor may purchase and own as part of the Leased Premises or such items of personal property which have been purchased by Lessee in substitution or replacement of personal property items originally purchased by Lessor.

4.5 Intellectual Property Rights. Lessee shall license the relevant intellectual property rights in, to and relating to the Dallas Cowboys, whether now in existence or created in the future, including, without limitation, the relevant copyrights, trademarks, broadcast, trade dress and merchandising rights, in or relating to, the Dallas Cowboys, the relevant names, logos and likenesses, as well as the rights to protect, enforce and license any or all of the foregoing. Upon termination of this Lease, Lessee shall remove all such intellectual property from the Facilities and shall repair any damage to the Facilities related to such removal.

ARTICLE 5.
USE OF PREMISES

5.1 Use. Subject to the terms of this Lease, the Facility shall be used for sports, recreational and entertainment uses and events for the benefit of the City and general public.

(a) Lessee's and Team Use. Lessee shall have the right to use the Leased Premises for the development, construction, maintenance and use of the Facilities and for any other lawful purposes that do not materially and adversely interfere with or interrupt the public use or operation of the Facilities associated with the School Use and City Use.

(i) Lessee will enter into a 25 year sublease agreement with the Team for use of the Stadium as the primary Team practice facility to include a portion of the Team's official pre-season football training camp (at a minimum one week per year), regular season practices and mini camps as allowed by NFL rules and regulations throughout the Term, subject to Force Majeure.

(ii) Lessee may sublease or license the Facilities and any portions thereof to third parties for other uses which do not conflict with the uses described in Section 5.1(a)(i) above or the City Use and School Use as set forth in Sections 5.l(b) and (c) below.

(b) City Use. Subject to the scheduling procedures established by the Lessee and City, the City shall have the right to use all or such portion as needed for the use of the City of the Stadium and Parking Facilities at the Fixed Charges ("Fixed Charges") as set forth in subparagraph 5.1(d) below, for a minimum of 185 event days per year (the "City Use"). Such event days shall be mutually agreed upon by Lessee and City within one hundred eighty (180) days prior January 1 of each year (except for the first year of the Term during which the event days for City Use will be mutually agreed upon at least sixty (60) days prior to January 1); provided, however, such event days shall not be scheduled for any time period in which the Stadium and Parking Facilities will be used by Lessee. In exchange for Lessee providing the food, beverage, and parking for the City Use events, Lessee shall be entitled to recover the revenue from such items and services.

(c) School Use. Subject to the scheduling procedures mutually agreed upon by the Lessee and FISD, the FISD shall have the right to use, at the dates and times as listed below, the Stadium and Parking Facilities at the Fixed Charges set forth in Section 5.1(d) below.

(i) FISD will have the exclusive use of the Stadium ("FISD Exclusive Events").

(1) for high school home football games on Thursday from 4:00 p.m. to 10:00 p.m. and Friday from 4:00 p.m. to 10:00 p.m. (including up to a one (l) hour non-contact walk-through practice on the afternoon of the day immediately preceding the scheduled football game, provided that there is no scheduled Lessee Event on that preceding day) from the start to finish of the University Interscholastic League ("UIL") football season schedule and Saturdays during UIL post-season football; and

(2) for FISD high school graduation ceremonies to be held Friday and Saturday of the weekend of the first full week of June; and

(3) for the FISD pin ceremony to be held the first Monday in May; and

(4) ten (10) other days of FISD sports or fine arts events subject to FISD paying janitorial costs solely for such events.

(ii) Provided there is no conflict with a Lessee Event scheduled by Lessee, the FISD shall have the ability to use the Stadium on a nonexclusive basis ("FISD Non-Exclusive Events"):

(1) for FISD home varsity football games which may for various reasons (such as a change in requirements by the UIL) be needed to be scheduled on dates other than the FISD Exclusive Events dates of Thursday and Friday outlined under Section 5(c)(i) above;

(2) for FISD soccer events other than those used as FISD Exclusive Events; and

(3) for high school performance events such as band competitions other than those used as FISD Exclusive Events.

(iii) For purposes of scheduling the FISD Exclusive Events and FISD Non-Exclusive Events, the FISD will provide to the Lessee the schedule of FISD Exclusive Events and the

requested FISD Non-exclusive Event dates on or about November l of each preceding year of the Term hereof to develop the succeeding calendar year event schedule for the Stadium. By April 30 of the following year, the Lessee will submit to the FISD the current year scheduling for the Stadium. The FISD will have priority scheduling for all FISD Exclusive Event dates. For FISD Non-Exclusive Events dates, the Lessee will grant, if reasonably possible, the FISD scheduling requests for the Stadium, subject to the following:

(1) Lessee does not plan to schedule a Lessee Event on a date requested by the FISD;

(2) FISD pays the janitorial costs of the FISD Non-Exclusive Events; and

(3) If Lessee schedules a FISD Non-Exclusive Event and at least 60 days prior to such event, Lessee is able to host a Lessee Event in the Stadium on such date, Lessee may require that FISD reschedule or relocate the FISD Non-Exclusive Event to an alternate FISD stadium.

(iv) FISD shall retain all ticket revenue at ticket pricing established by the FISD for its football games and other FISD Non-Exclusive Events held at the Stadium. FISD and Lessee will develop a pre-agreed concessions revenue operations model for FISD events that will allow the appropriate FISD Booster Clubs to participate in the Stadium concessions revenues in a method which will permit these organizations the opportunity to produce revenue streams similar to that now experienced at other FISD events as long as such organizations meet the training requirements

(d) Fixed Charges. Fixed Charges shall be paid by the City and FISD as provided herein.

(i) The Fixed Charges for a City Use or FISD Use shall be:

(1) For an event day with expected attendance of 1,500 or more persons - $4,500 per event day;

(2) For an event day with expected attendance of less than 1,500 - $2,200 per event day.

(ii) City and FISD shall provide for their respective event police, EMS, ticket takers and parking attendants, as required, which shall not be included in Fixed Charges.

(iii) The Fixed Charges shall be adjusted annually according to the change in the Consumer Price Index for the Dallas-Fort Worth area.

(iv) FISD shall receive a credit (the “FISD Credit”) in the amount of one-half (1/2) of the annual Base Rent to be applied toward its Fixed Charges incurred in each Lease Year, and FISD shall be responsible for any Fixed Charges in excess of the FISD Credit.

(e) City, FEDC and FCDC Suites. Each of the City, the FEDC and the FCDC will be provided the use of a private suite (the "City Suites") in locations determined by Lessee, and reasonably acceptable to the respective City, FEDC and FCDC, at the Stadium for all Lessee

Events at no charge, unless the Lessee is required to purchase the ticket, and for all City Events and FISD Events. In the event the City, FEDC or FCDC require food and beverages in the City Suites, the City, FEDC or FCDC, respectively, will pay for those items as they may request.

(f) FISD Suite. The FISD will be provided, in a location determined by Lessee, and reasonably acceptable to FISD, the use of one private suite (the "FISD Suite") for all Lessee Events at no charge, unless the Lessee is required to purchase the tickets, and for all FISD Exclusive Events, FISD Non-Exclusive Events and City Events. In the event the FISD requires food and beverages in the FISD Suite, FISD will pay for those items as they may request.

5.2 Compliance with Laws. Lessee agrees not to use the Leased Premises for any use or purpose in violation of any valid and applicable law, regulation or ordinance of the United States, the State of Texas, the City of Frisco or other lawful governmental authority having jurisdiction over the Leased Premises, including, without limitation, the Americans with Disabilities Act of 1990, as amended; provided, however, there shall be no violation by Lessee of this provision (i) so long as Lessee shall, in good faith within a reasonable time after Lessee acquires actual knowledge thereof, by appropriate proceedings and with due diligence, contest the alleged violation or the validity or applicability of the law, regulation or ordinance; (ii) until Lessee has had a reasonable time after a final adjudication that such law, regulation or ordinance, in fact, has been violated; (iii) so long as neither Lessor nor any portion of the Leased Premises, during the period of such contest, will be subject to any liability, loss, penalty or forfeiture; and (iv) so long as Lessee is in compliance with the terms of the planned development ordinance governing the Facilities as of the date of this Lease and are using the Leased Premises in accordance with the use provision set forth in this Lease. To the extent permitted by applicable law, Lessor will reasonably cooperate with Lessee to structure any proposed law or ordinance in a manner that would minimize its effect on the use of the Leased Premises.

5.3 Maintenance; Casualty.

(a) Lessee shall keep all permanent Improvements that from time to time may be erected on the Leased Premises to a standard commensurate with other NFL team practice facilities and in a state of good repair on a regular and ongoing basis ordinary wear and tear, acts of war, terrorism, acts of God and loss by casualty, acts or omissions by Lessor or damage caused by City Use or School Use (except to the extent Lessee is required under this Lease to repair casualty damage) excepted. Upon termination of this Lease, Lessee shall deliver up the Leased Premises then situated thereon in good condition, ordinary wear and tear, acts of war, terrorism, acts of God, and loss by casualty acts or omissions by Lessor or damage caused by City Use or School Use (except to the extent Lessee is required under this Lease to repair casualty damage) excepted. The Base Rent shall be deposited into a City rent account to be disbursed at the request of Lessee and approved by Lessor, which approval shall not be unreasonably withheld or delayed, for operations and maintenance expenses including, but not limited to the Fixed Charges for FISD as defined herein.

(b) Lessee shall maintain the field in the Stadium in as good, or better, condition as UIL competition football fields within the State of Texas, and shall maintain the General Fields in good playable condition.

(c) With regard to casualty damage to the Leased Premises, Lessee shall, as soon as reasonably practicable but in no event later than 180 days after the date of a casualty, commence the work of repair, reconstruction or replacement of the damaged Improvement. If such casualty occurs during the last two (2) years of the Lease, or any extended Term of the Lease, if applicable, and the extent of the damage to the Leased Premises is greater than twenty percent (20%) of the then replacement value thereof (exclusive of the value of the Land) or in the event the net insurance proceeds together with the amount of any deductible are in the case of any casualty (regardless of when same occurs) not sufficient to repair, reconstruct, or replace the damaged Improvement to substantially the same condition as of the date of such casualty, then, Lessee shall have the option, within 180 days from the date of the occurrence of such casualty damage, to terminate this Lease by giving written notice of such termination to Lessor within said 180-day period, in which event (i) this Lease shall terminate as of the termination date specified in such notice to Lessor, which shall not be less than 30 days after the date of such notice; (ii) Lessee shall no longer be required to pay Base Rent as contemplated by Article 2 hereof and all other payments due and owing as of the termination date; (iii) Lessee shall not be required to repair the damage; (iv) all casualty insurance proceeds available as a result of such damage shall be paid to and be the property of Lessor and Lessee, in proportion to their capital contributions to the Facilities pursuant to the Development Agreement; and (v) the parties hereto shall have no further liability or obligations one to the other except as expressly provided for herein.

5.4 Operational Rights; Revenue.

(a) Other than as set forth in Section 5.1 above and in this section, Lessee shall receive all revenues generated from and associated with the Facilities for the duration of the lease. Such revenues shall include, without limitation, all sponsorship revenues, and all other revenues associated with the Improvements or any components thereof. Lessee shall provide to Lessor 3% of the total revenue from the sponsor naming rights of the Stadium, not to exceed $500,000 (in the aggregate, for the Term). Lessee will institute a parking fee for the use of the Parking Facilities and other parking within the Land that will be divided equally between Lessor and Lessee. Lessor's portion of the parking fee will be utilized for payment of Lessor's debt service on the Facilities. Lessee's portion of the parking fee will be utilized to pay for maintenance expenses.

(b) Subject to the terms and provisions of this Lease, Lessee shall have full and exclusive control of the management and operation of the Facilities. Without limiting the generality of the foregoing during the Term of this Lease, (i) Lessee shall have the sole right to grant and enter into licenses, rights, subleases, management agreements, operating agreements and any and all other agreements of any nature relating to the Leased Premises or the name thereof on such terms as Lessee deems appropriate, and (ii) Lessee shall own all revenues of any source generated by or from the Leased Premises or the operation or management or the name thereof.

(c) Lessee shall have exclusive authority, control and rights in selecting the name of the Stadium, as well as the sponsor or sponsors for which the Facilities (or portions thereof) will be named from time to time or for which signage and advertising will be sold within or without the Facilities, including, without limitation, the right to retain all proceeds

therefrom during the term of this Lease. Notwithstanding the foregoing, the name of the Stadium or any other field shall not have a name containing, depicting or related to any alcohol, tobacco or related products; provided, however, that no provision herein will prevent any area within the Stadium, such as a concourse within the Stadium, from having a name containing, depicting or related to any alcohol, tobacco or related products.

(d) Subject to the terms and provisions of this Lease, Lessee shall have full and exclusive control of any and all advertising signage displayed in, on, upon or around the Leased Premises. Notwithstanding the foregoing or any other provisions contained in this Lease, Lessee must comply with all ordinances of the City regulating signs, including Ordinance 02-04-46. The Lessee will use reasonable commercial efforts to have all signs related to alcohol or alcohol related products turned off, covered or removed by Lessee during City Use and/or FISD Use. During FISD Exclusive and Non-exclusive Events, Lessee shall cooperate with FISD to permit FISD to sell advertising and sponsorship rights on the video displayed within the Stadium, so long as such advertising does not conflict with Lessee's advertising or sponsorships.

(e) Lessee shall have and shall retain all rights relating in any way to the broadcasting of games or any other Lessee Event via any media, and to all revenue derived from the sale of broadcast rights, broadcast advertising, or other sources of revenue relating to broadcasting of any Lessee Event during the Term of this Lease.

ARTICLE 6.
PROMOTION

Lessee agrees that it shall use reasonable commercial efforts to promote the Team and in any media which it publishes that makes a reference to the Stadium shall use reasonable commercial efforts to make reference to the name "Frisco" or the "City of Frisco" and "Frisco ISD" or "Frisco Independent School District". Lessee will use reasonable commercial efforts to negotiate with the City a marketing agreement to promote the City and the Facilities at no cost to the City.

ARTICLE 7.
INSURANCE AND INDEMNITY

7.1 Liability Insurance. Lessee agrees, at its sole expense, to obtain and maintain commercial general liability insurance at all times during the Term hereof with reputable insurance companies authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits of $1,000,000 Combined Single Limit occurrence/$2,000,000 aggregate protecting Lessor and Lessee against any liability, damage, claim or demand arising out of or connected with the condition or use of the Leased Premises. Such insurance shall include contractual liability, personal injury and advertising liability, business automobile (including owned, non-owned and hired) and independent contractor liability. Such insurance coverage must be written on an "occurrence" basis. It may be maintained by any combination of single policies and/or umbrella or blanket policies and may be obtained and maintained by a Sublessee with respect to that portion of the Leased Premises subleased to such Sublessee. Lessor, and its elected officials, and FISD, and its elected officials,

shall be named as an additional insured, as their interests appear, on all insurance policies required by this Section 7.1. Lessee, its officers, directors, employees, partners and agents shall be named as an additional insured, as their respective interests appear, on all public liability policies obtained by Lessor and FISD which cover any events at the Facilities and such coverage shall be the primary coverage during City Use and School Use.

7.2 Workers' Compensation Insurance. Lessee agrees, at its sole expense, to obtain and maintain workers' compensation insurance, as required by applicable law, during the Term. The policy will be endorsed to provide a waiver of subrogation as to Lessor.

7.3 Property Insurance. At all times during the Term of this Lease, Lessee shall, at its sole expense, keep all buildings and structures included in the Leased Premises insured against "all risk" of loss for full replacement cost coverage, with a deductible not to exceed $1,000,000.00, to include direct loss by fire, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, boiler and machinery and flood. Coverage must be written by reputable insurance companies authorized to transact business in the State of Texas. Lessor shall be named as an additional insured or additional loss payee, as appropriate.

7.4 Policies. All insurance policies required by this Article 7 shall provide for at least thirty (30) days written notice to Lessor and FISD, as applicable, before cancellation and certificates or copies of policies of insurance shall be delivered to Lessor and FISD, as applicable. If any blanket general insurance policy of Lessee complies with the terms of this Article 7, the naming of Lessor and FISD, as applicable, therein as an additional insured shall be deemed compliance with the requirements for the insurance coverage provided in any such blanket policy. Lessor, FISD, as applicable, and Lessee hereby waive all claims, rights of recovery and causes of action that either Party or any party claiming by, through or under such Party by subrogation or otherwise may now or hereafter have against the other Party or any of the other Party's present and future subsidiaries, Affiliates, partners, officers, directors, employees, direct or indirect stockholders, agents, other representatives, successors and assigns for bodily injury (including death) to persons, or loss or damage to property of Lessor, FISD and Lessee whether caused by the negligence or fault of Lessor, FISD and Lessee or their partners, directors, officers, employees, agents or representatives or otherwise, to the extent that the injuries, losses or damages are covered by the proceeds of insurance policies maintained by either Party.

7.5 Adjustment of Losses. At any time during the Term of this Lease, Lessee may name any Leasehold Mortgagee as a mortgagee or an additional insured, as appropriate, under any of the insurance policies required under Section 7.3 hereof, as its interest may appear, provided that such Leasehold Mortgagee shall agree to permit the insurance proceeds to which it is entitled to be used to rebuild, repair or restore the Facilities if the Lessee is required under this Lease to repair such casualty damage. Any loss under any such insurance policy required under Section 7.3 hereof shall be made payable to Lessee for the benefit of Lessee and Lessor, to the end that Lessee shall be entitled to collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Leased Premises, to be applied pursuant to Section 7.6 below. Any accumulation of interest on the insurance proceeds collected by Lessee shall be added to, and become a part of, the fund being held by Lessee for the benefit of Lessor and Lessee. The adjustment of losses with the insurer shall be made by Lessee.

7.6 Application of Proceeds of Property Insurance. All proceeds payable pursuant to the provision of any policies of property insurance required to be carried under the terms of this Lease (net of reasonable expenses of collection) shall be applied unless otherwise provided above, for the following purposes:

(a) All such net proceeds shall first be used, subject to any other terms and conditions contained in this Lease, as a fund for the rebuilding, restoration and repair of the portion of the Leased Premises which have become destroyed or damaged for which such proceeds are payable; and

(b) Following completion of all work under subsection (a) above, any proceeds not disbursed pursuant to subsection (a) above shall be retained by the City to be available to Lessee for Capital Expenditures to the Facility.

7.7 Environmental Investigation and Remediation.

(a) Lessee represents and warrants that it has reviewed all of the Phase I Environmental Site Assessments of the Land (collectively, the "Phase I"), and the results of Lessee's review did not identify any condition relating to the environment that could reasonably be expected to materially and adversely impact Lessee's ability to conduct its operations at the Leased Premises. Lessor makes no representation or warranty concerning the condition of the Leased Premises. Lessor represents and warrants, however, that to Lessor's knowledge, based on Lessor's actual knowledge and its review of the findings contained in the Phase I, Lessor has not identified any conditions relating to the environment which could reasonably be expected to materially and adversely impact Lessee's ability to conduct its operations at the Leased Premises.

(b) Lessee shall be responsible for performing any environmental investigation and remediation work which may be required in connection with the use and occupancy of the Leased Premises by Lessee and which is caused by the presence of Hazardous Materials on the Leased Premises, except and to the extent the presence thereof results solely from the act of Lessor or its officers, employees, agents or representatives or Lessor's predecessors in title to the Land in which event the Lessor shall be responsible at its sole expense for performing any environmental investigation and remediation work which may be required in connection with the use and occupancy of the Leased Premises and which is caused by the presence of Hazardous Materials on the Leased Premises. Such environmental investigation and remediation work shall be conducted in accordance with all applicable laws. Lessee shall notify and advise Lessor of the remediation Lessee will undertake and the procedures to be used. Lessee shall complete the remediation with due diligence and shall use commercially reasonable efforts to comply with, and shall cause its agents and contractors to comply with, all applicable laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. Lessee's obligation as provided herein to undertake environmental investigation and remediation of the Leased Premises shall be a continuing obligation of Lessee which shall survive throughout the Term.

(c) The term "Hazardous Materials" means any substance, material or waste which is now or hereafter classified or considered to be hazardous, toxic or dangerous under any

federal, state or local laws, rules and regulations (collectively "Laws") affecting the Leased Premises relating to pollution or the protection of human health, natural resources or the environment, but shall exclude any such items that are necessary for the ordinary performance of Lessee's activities, provided that such are used, stored and disposed of in compliance with all Laws. If Lessee breaches its obligations under this Section 7.7 and such breach is not cured following notice and within the applicable cure period specified in Article 10 below, Lessor may take any and all action reasonably appropriate to remedy such breach and Lessee shall promptly pay all reasonable costs incurred by Lessor in connection therewith.

(d) The provisions of this Section 7.7 shall survive the termination of this Lease and are solely for the benefit of Lessor, FISD, Lessee, and Lessee's Leasehold Mortgagee (if any) and shall not be deemed for the benefit of any other person or entity.

ARTICLE 8.
ASSIGNMENT AND SUBLETTING

8.1 Assignment. Lessee shall not sell or assign all of the leasehold estate created hereby in its entirety without the consent of Lessor, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, Lessee may, without the consent of Lessor, assign or transfer this Lease to (a) any Affiliate of Lessee, or (b) any other person or entity or an Affiliate thereof who acquires the ownership interest of the Team provided that such person or entity acquiring such ownership of the Team has been approved by the NFL. Upon any such assignment, the assignee shall execute and deliver to Lessor a written assumption, in form and substance reasonably satisfactory to Lessor, of all of the obligations of Lessee pertaining to the Leased Premises and accruing under this Lease after such assignment. Lessee shall thereafter be released of all liabilities or obligations thereafter accruing under this Lease.

8.2 Subletting.

(a) Lessee shall have the right at any time, without the consent of Lessor, to sublease all of the Leased Premises or the right to operate the Facilities to any Affiliate of Lessee; provided, however, that no such subletting or assignment shall relieve Lessee of any of its obligations hereunder unless otherwise agreed in writing by Lessor, and all subleases shall be subject to the terms and provisions of this Lease.

(b) Lessee shall have the right at any time, to sublease or otherwise assign the rights of use to concessions, retail areas, restaurants and other portions of the Leased Premises incident to the full use and operation thereof as and on such terms Lessee shall desire, including, but not limited to, scoreboards, signs and billboards located within or associated with the Facilities.

(c) No Sublessee shall have any right to sublease or otherwise assign or encumber its interest in the Leased Premises.

8.3 General Provisions. Lessee shall, in connection with any assignment or sublease, provide notice to Lessor of the name and address of any assignee or Sublessee, together with a complete copy of the assignment agreement or sublease.

8.4 Nondisturbance Agreement. Upon the written request of Lessee, Lessor will enter into a Nondisturbance Agreement (herein so called) with any Sublessee, Leasehold Mortgagee or Subleasehold Mortgagee. Such Nondisturbance Agreement shall include such reasonable provisions as requested by a Sublessee, Leasehold Mortgagee or Subleasehold Mortgagee, subject to the reasonable approval of Lessor, but in any event shall (a) reaffirm Lessor's ownership of the Leased Premises, (b) confirm (if true) that this Lease is in full force and effect without default by Lessee (or, if a default exists, specifying the default and the remedy required by the Lessor), (c) and, in the case of Sublessee, provide, in substance, that, so long as the Sublessee complies with all of the terms of its sublease or other applicable agreement, Lessor, in the exercise of any of its rights or remedies under this Lease, shall not deprive the Sublessee of possession, or the right of possession, of the subleased property during the term of the sublease, deprive the Sublessee of any other rights under the sublease or other applicable agreement or join the Sublessee as a party in any action or proceeding to enforce or terminate this Lease or obtain possession of the property leased in the sublease or other applicable agreement which would entitle Lessor to dispossess the Sublessee thereunder or otherwise terminate the Sublessee's rights thereunder.

ARTICLE 9.
LEASEHOLD MORTGAGES

9.1 Leasehold Mortgages Permitted. Lessee, from time to time and at any time, shall have the right to grant a Leasehold Mortgage; provided, however, the amount of indebtedness that may be secured by such Leasehold Mortgage shall not exceed Lessee's investment in the Leased Premises pursuant to the Development Agreement. In the event that Lessee grants a Leasehold Mortgage, upon Lessee's written request to Lessor, Lessor will execute and deliver an estoppel certificate addressed to the Leasehold Mortgagee setting forth the information described in Section 14.2 of this Lease, confirming the terms of this Article 9, and providing Lessor's agreement to recognize the Leasehold Mortgagee or any purchaser of the Mortgaged Premises at foreclosure in the same manner as an assignee pursuant to Section 8.1 of this Lease. Lessor agrees to accept any amendments of this Lease which are requested by a Leasehold Mortgagee prior to the execution of its Leasehold Mortgage which are calculated to protect the Leasehold Mortgagee's interest in this Lease under its Leasehold Mortgage and do not materially diminish the rights of Lessor under this Lease. Notwithstanding the foregoing, no Leasehold Mortgagee shall acquire, by virtue of the Leasehold Mortgage, any greater right in the Mortgaged Premises and in any building or improvements thereon than Lessee then had under this Lease. In no event shall Lessee have the right to encumber, subordinate or render inferior in any way Lessor's fee simple title in and to the Leased Premises.

9.2 Notices to Leasehold Mortgagees. If at any time after execution and recordation of any Leasehold Mortgage in the Real Property Records of Collin County, Texas, in accordance with the provisions of Section 9.1 hereof, the Leasehold Mortgagee shall notify Lessor in writing that the Leasehold Mortgage on the Mortgaged Premises has been given and executed by Lessee, and shall furnish Lessor at the same time with the address to which the

Leasehold Mortgagee desires copies of notices to be mailed, or designates some person or corporation as its agent and representative for the purpose of receiving copies of notices, Lessor hereby agrees that it will thereafter deliver in the manner specified in Section 14.5 to the Leasehold Mortgagee and to the agent or representative so designated by the Leasehold Mortgagee, at the address so given, duplicate copies of any and all notices in writing which Lessor may from time to time give or serve upon Lessee under and pursuant to the terms and provisions of this Lease and any and all pleadings in suits filed by Lessor against Lessee. No notice to Lessee shall be effective as to the Leasehold Mortgagee unless duplicate copies thereof are delivered to such Leasehold Mortgagee at the same time the notice is given or served upon Lessee.

9.3 Leasehold Mortgagee's Right to Cure. If Lessor shall ever be entitled to exercise a right hereunder to terminate this Lease after the giving of notice and/or the passage of time, as applicable, Lessor, subject to notification by Leasehold Mortgagee pursuant to Section 9.2 hereof, shall deliver additional written notice to Leasehold Mortgagee of Lessor's intention to so terminate this Lease and describing the existing defaults, and Leasehold Mortgagee thereafter shall have thirty (30) days to cure the defaults described in such written notice. Notwithstanding the foregoing, but subject to the provisions of Section 10.2 hereof, in the event (a) such default is not capable of cure within such 30-day period, this Lease may not be terminated if Leasehold Mortgagee shall deliver to Lessor, within such 30-day period, written notice of Leasehold Mortgagee's intention to cure the specified defaults and shall commence and diligently pursue the cure of the specified defaults and such defaults are cured within 120 days of the date of such notice, or (b) any Leasehold Mortgagee is not in actual possession of the Mortgaged Premises on the date of the additional notice given the Leasehold Mortgagee under this Section 9.3, and possession is necessary in order to cure any default, then the time within which such Leasehold Mortgagee may commence to cure such default shall be extended for a reasonable time not to exceed 120 days until such Leasehold Mortgagee can obtain actual possession of the Mortgaged Premises. No purported termination of this Lease shall be effective until such written notice shall have been given to Leasehold Mortgagee and such 30-day period, or additional time period as provided above, shall have expired without the described defaults having been cured. Leasehold Mortgagee may, at its option and at any time before the rights of Lessee under this Lease have been terminated, pay any of the Base Rent due hereunder, procure any insurance required hereunder, pay any Imposition required hereunder, make any repairs and improvements required hereunder, or do any other act or thing or make any other payment required of Lessee by the terms of this Lease or which may be necessary and appropriate to comply with the covenants and conditions of this Lease to prevent the termination of this Lease. All payments so made and all things so done and performed by any such Leasehold Mortgagee shall be as effective to prevent a forfeiture of the rights of Lessee hereunder as if performed by Lessee.

9.4 New Lease. Notwithstanding anything to the contrary contained in this Lease or otherwise, in the event of termination of this Lease for any reason prior to the stated expiration date, Lessor shall promptly notify all Leasehold Mortgagees of such termination. If the Leasehold Mortgagee having the highest priority with respect to the Lease cures (subject to Section 9.5 hereof) all defaults giving rise to such termination as provided below, Lessor shall enter into a new lease of the Mortgaged Premises with such Leasehold Mortgagee or its designee for the remainder of the Term of this Lease, such new lease to be effective as of the

date of termination of this Lease, at the Base Rent payable hereunder and upon all of the same terms, conditions, covenants, agreements, provisions and limitations contained herein, subject to the following:

(a) the Leasehold Mortgagee entitled to the new lease shall make written request to Lessor for a new lease within sixty (60) days of receipt by the Leasehold Mortgagee of written notice from Lessor of the date of termination of this Lease; and

(b) at the time of the execution and delivery of the new lease, the Leasehold Mortgagee or its designee shall pay to Lessor all amounts specified in the notice of termination delivered by Lessor which would have been due hereunder except for such termination and which are currently due except for such termination, and shall promptly cure (subject to Section 9.5 hereof) all other defaults giving rise to such termination.

9.5 Certain Cure Requirements. Notwithstanding the provisions of Section 9.4 above, a Leasehold Mortgagee's right to enter into a new lease with Lessor as provided in said Section 9.4 shall not be conditioned upon such Leasehold Mortgagee curing any default of Lessee not reasonably susceptible of being cured by such Leasehold Mortgagee or its designee.

9.6 Survival. The provisions of Section 9.4 and Section 9.5 shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if said Section 9.4 and Section 9.5 were a separate and independent contract among Lessor, Lessee and any Leasehold Mortgagee.

9.7 Leasehold Mortgagees' Liability. Unless a new lease shall have been executed pursuant to Section 9.4 hereof, no Leasehold Mortgagee shall be or become personally liable to Lessor as an assignee of this Lease, for the payment or performance of any obligation of Lessee unless and until it expressly assumes by written instrument the payment or performance of such obligation, and no assumption of liability shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by any Leasehold Mortgage, or from a conveyance or assignment pursuant to which any purchaser at foreclosure shall acquire the rights and interest of Lessee under the terms of this Lease; provided, however, any such assignee or purchaser must timely and diligently perform all obligations of Lessee hereunder.

ARTICLE 10.
DEFAULT OF LESSEE

10.1 Defaults. Lessee shall be in default if any of the following events ("Events of Default") shall occur: (a) subject to the provisions of Section 10.3 below, the failure on the part of Lessee to pay 100% of the Base Rent when due and the continuation of such failure for ten (10) days after Lessor has provided to Lessee and to each Leasehold Mortgagee, in accordance with Section 9.2 of this Lease, a written notice of such failure; (b) subject to the provisions of Section 10.3 below, any breach by Lessee of any covenant of Lessee under this Lease other than the failure to pay Base Rent when due, and such breach has not been cured within thirty (30) days from and after the date written notice of such breach is given by Lessor to Lessee; provided, however, no Event of Default shall exist if Lessee shall have commenced to remove or to cure

such breach and shall be proceeding with reasonable diligence to completely remove or cure such breach (provided such breach must be cured within 180 days after such notice); (c) the making of any general assignment for the benefit of creditors by Lessee; (d) the filing of a voluntary petition in bankruptcy or a voluntary petition for an arrangement or reorganization under the United States Federal Bankruptcy Act (or similar statute or law of any foreign jurisdiction) by Lessee; (e) the appointment of a receiver or trustee for all or substantially all of Lessee's interest in the Leased Premises or its leasehold estate hereunder if not removed within 120 days; and (f) the entry of a final judgment, order or decree of a court of competent jurisdiction adjudicating Lessee to be bankrupt, and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal therefrom.

10.2 Remedies. Upon the occurrence and during the continuance of an Event of Default, Lessor shall have all remedies available to Lessor at law or in equity; including, without limitation, termination, injunction and specific performance, subject to the provisions of Article 9 of this Lease. In the event that the Facilities no longer house the primary Team practice facility as described herein and subject to Force Majeure, Lessee shall be liable to Lessor, as Lessor's sole remedy, for the unamortized costs of City Debt and TIRZ#5 Parking Debt used to construct the Stadium Facilities and TIRZ#5 Parking Facilities by the Public Entities as set forth in the Development Agreement. All remedies of Lessor under this Lease shall be cumulative, and the failure to assert any remedy or the granting of any waiver (as provided in Section 14.16 hereof) of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default.

10.3 Rights of Leasehold Mortgagees. Notwithstanding any other provision of this Article 10, all rights and remedies of Lessor under Section 10.1 and Section 10.2 above are subject to the provisions of Article 9 of this Lease.

ARTICLE 11.
DEFAULT OF LESSOR

11.1 Defaults and Remedies. In the event of any breach by Lessor of any covenant of Lessor under this Lease, Lessee shall have the right to deliver to Lessor a written notice specifying such breach or non-payment, and unless within thirty (30) days from and after the date of delivery of such notice Lessor shall have commenced to remove or to cure such breach or occurrence and shall be proceeding with reasonable diligence to completely remove or cure such breach or occurrence (provided such breach or occurrence must be cured within 180 days after such notice), then Lessee shall have all remedies available to it at law or in equity; including, without limitation, termination, injunction and specific performance. All remedies of Lessee under this Lease shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of any subsequent event of default.

ARTICLE 12.
CONDEMNATION

12.1 Definitions. Whenever used in this Article 12, the following words shall have the definitions and meanings hereinafter set forth:

(a) "Condemnation Proceeding". Any action brought for the purpose of any taking of the Leased Premises, or any part thereof or of any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Leased Premises), by competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

(b) "Taking" or "Taken". The event and date of vesting of title to the Leased Premises or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Leased Premises), pursuant to a Condemnation Proceeding.

12.2 Efforts to Prevent Taking. Lessor shall use its best efforts to refrain from and cause all other competent authorities with the power of eminent domain to refrain from instituting any Condemnation Proceedings or exercising any other powers of eminent domain with respect to the Leased Premises, or any part thereof or any interest therein, during the Term of this Lease.

12.3 Entire Taking. If all or substantially all of the Leased Premises shall be Taken in Condemnation Proceedings, Base Rent shall be fully abated from and after the date of such Taking and from and after such date Lessee and Lessor shall not have any other obligations under this Lease with respect to the Leased Premises, except for those obligations which expressly survive the termination hereof.

12.4 Partial Taking.

(a) If less than all of the Leased Premises shall be Taken in any Condemnation Proceeding, a fair and equitable portion of the Base Rent attributable to the portion of the Leased Premises Taken shall be abated from and after the date of such partial Taking, and from and after such date Lessee and Lessor shall not have any other obligations under this Lease with respect to the portion of the Leased Premises that has been Taken, except for those obligations which expressly survive the termination hereof.

(b) If, following such Taking, Lessee determines in its sole and absolute discretion, that the remaining Leased Premises are not sufficient to operate the Facilities for their intended purposes, then Lessee, at its election, may vacate the Leased Premises, whereupon the Base Rent shall be fully abated from and after the date of such partial Taking, and from and after such date Lessee and Lessor shall not have any other obligations under this Lease with respect to the Leased Premises, except for those obligations which expressly survive the termination hereof. Such election to vacate must be exercised no later than ninety (90) days after the date of such Taking.

(c) If Lessee does not elect to vacate the Leased Premises upon any partial Taking, then (i) the Leased Premises shall be reduced by the portion thereof taken, in the Condemnation Proceedings, and the Base Rent payable hereunder shall be equitably reduced during the unexpired portion of the Term as provided above, and (ii) Lessee shall commence and proceed with reasonable diligence to repair or reconstruct the remaining Improvements on the

Leased Premises, if any; provided, however, Lessee's obligation to so repair or reconstruct the remaining Improvements shall be limited to the proceeds of the condemnation award actually received by Lessee.

12.5 Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Leased Premises shall be Taken, the Base Rent shall be reduced during the duration of such Taking in a fair and equitable manner that reflects the inability of Lessee to use the affected portion of the Leased Premises. A Taking shall be considered "temporary" only if the period of time during which Lessee is deprived of usage of all or part of the Leased Premises as the result of such Taking does not materially interfere in Lessee's sole and absolute discretion, with the ability of Lessee to use and operate the Facilities for their intended purposes. Any other "Taking" that is not "temporary" as described above shall be treated as an entire Taking under Section 12.3 above or as a partial Taking under Section 12.4 above.

12.6 Condemnation Award.

(a) No Taking shall have the effect of terminating this Lease. None of the provisions of this Article 12 shall affect the right, title or interest of Lessee in the leasehold interest created by this Lease. For the purposes of determining the portion of any condemnation award to which Lessee is entitled to receive from the condemning authority as a matter of law, Lessee's right, title and interest in the Leased Premises shall be granted and arising under this Lease without consideration of this Article 12. This Article 12 pertains only to Lessee's and Lessor's continuing obligations under this Lease following a Taking and to the agreement between Lessor and Lessee regarding any condemnation awards.

(b) Any condemnation award (other than awards for the value of Lessee's leasehold interest or for the disruption of Lessee's business, all of which shall be the sole property of Lessee), shall be divided between Lessor and Lessee in accordance with the relative amounts expended by each Party for capital costs pertaining to the Leased Premises. Lessor shall deliver to Lessee that portion of any condemnation award that Lessor may receive to which Lessee is entitled as provided in this Section 12.6(b). The provisions of this Section 12.6(b) shall survive any such termination.

12.7 Settlement of Proceeding. Lessor shall not make any settlement with the condemning authority in any Condemnation Proceedings nor convey or agree to convey the whole or any portion of the Leased Premises to such authority in lieu of condemnation without first obtaining the written consent of Lessee and all Leasehold Mortgagees.

ARTICLE 13.
REPRESENTATIONS, WARRANTIES AND SPECIAL COVENANTS

13.1 Lessor's Representations, Warranties and Special Covenants. Lessor hereby represents, warrants and covenants as follows:

(a) Existence. Lessor is a home rule municipal corporation of the State of Texas duly incorporated and currently existing pursuant to the constitution and laws of the State of Texas, including the Texas Local Government Code and Texas Government Code.

(b) Authority. Lessor has all requisite power and authority to own the Leased Premises, to execute, deliver and perform its obligations under this Lease and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law, has duly authorized the execution and delivery of this Lease, the performance of its obligations under this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease is a valid and binding obligation of Lessor and is enforceable against Lessor in accordance with its terms.

(d) No Defaults. The execution by Lessor of this Lease and the consummation by Lessor of the transactions contemplated hereby (i) do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under Lessor's charter or any resolution, indenture, agreement, instrument or obligation to which Lessor is a party or by which the Leased Premises or any portion thereof is bound; and (ii) do not, to the knowledge of Lessor, after reasonable inquiry, constitute, a violation of any law, order, rule or regulation applicable to Lessor or any portion of the Leased Premises of any court or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessor or any portion of the Leased Premises.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Lessor to enter into this Lease, make the agreements herein contained or perform the obligations of Lessor hereunder other than those which have been obtained.

(f) Quiet Enjoyment. During the Term of this Lease and subject to the terms of this Lease, Lessee shall have the quiet enjoyment and peaceable possession of the Leased Premises against hindrance or disturbance by Lessor or any person or entity acting by, through or under Lessor.

(g) Proceedings. There are no actions, suits or proceedings pending or, to the reasonable best knowledge of Lessor, threatened or asserted against Lessor affecting Lessor or any portion of the Leased Premises, at law or at equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(h) Impositions. Lessor has not received any notice of any condemnation actions, special assignments or increases in the assessed valuation of taxes or any Impositions of any nature which are pending or being contemplated with respect to the Leased Premises or any portion thereof.

(i) Compliance with Laws. Lessor has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental agency pertaining to the Leased Premises or any portion thereof.

(j) Encumbrances. Lessor has good and marketable fee simple title, subject to no liens or security interests, and Lessor has not placed or granted any liens or security interests against the Leased Premises. There are no actions pending, to the knowledge of Lessor, which would result in the creation of any lien on any portion of the Leased Premises, including, without limitation, water, sewage, street paving, electrical or power improvements which give rise to any lien, completed or in progress. Lessor shall not grant any liens or security interest on all or any portion of the Leased Premises other than (i) encumbrances which will not affect Lessee's use or enjoyment of the property, or (ii) a mortgage secured by the leased premises, provided that such mortgagee has provided to Lessee a non-disturbance agreement, in a form mutually acceptable to Lessee and such mortgagee.

(k) Limitations. Except as otherwise expressly provided herein, this Lease is made by Lessor without representation or warranty of any kind, either express or implied, as to the condition of the Leased Premises, its merchantability, its condition or its fitness for Lessee's intended use or for any particular purpose.

13.2 Lessee's Representations, Warranties and Special Covenants.

(a) Existence. Lessee is duly organized and validly existing under the laws of the state of its organization and is authorized to do business in the State of Texas.

(b) Authority. Lessee has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease is a valid and binding obligation of Lessee and is enforceable against Lessee in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors rights or (b) general principles of equity.

(d) No Default. The execution by Lessee of this Lease and the consummation by Lessee of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or condition which upon notice or the lapse of time or both would ripen into default under, the organizational documents of Lessee or under any indenture, agreement, instrument or obligation to which Lessee is a party or is bound.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Lessee to enter into this Lease, make the agreements herein contained or perform the obligations of Lessee hereunder other than those which have been obtained.

(f) As-Is. Except as provided for in Section 13.1 above and as otherwise provided in the Development Agreement, Lessee accepts the leasehold interest in the Land granted by this Lease on an "as-is" basis with all faults.

ARTICLE 14.
MISCELLANEOUS

14.1 Inspection. Lessee shall permit Lessor and its agents, upon no less than twenty-four (24) hours' prior written notice and being accompanied by Lessee or its agent, to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same on the condition that Lessee's and Lessee's tenants' and invitees' quiet enjoyment of the same is not interfered with.

14.2 Estoppel Certificates. Lessee and Lessor shall, at any time and from time to time upon not less than ten (10) days' prior written request by the other Party, execute, acknowledge and deliver to Lessor or Lessee, as the case may be, a statement in writing certifying (a) its ownership of the interest of Lessor or Lessee hereunder, as the case may be, (b) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which the Base Rent and any other charges have been paid, and (d) that, to the best knowledge of Lessor or Lessee, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default.) Upon request by Lessee, Lessor's estoppel certificate also shall be addressed to the Leasehold Mortgagee, if any.

14.3 Release. If requested by Lessor, Lessee shall, upon termination of this Lease, execute and deliver to Lessor an appropriate release, in form proper for recording, of all Lessee's interest in the Leased Premises, and upon request of Lessee, Lessor will execute and deliver a written cancellation and termination of this Lease and release of all claims (if none are then outstanding) in proper form for recording to the extent such release is appropriate under the provisions hereof. If requested by Lessee, Lessor shall, upon termination of this Lease, execute and deliver a written cancellation and termination of this Lease and release of all claims (if none are then outstanding) in proper form reasonably acceptable to Lessee for recording to the extent such release is appropriate under the provisions hereof.

14.4 Lessor's Right to Perform Lessee's Covenants. If Lessee shall fail in the performance of any of its covenants, obligations or agreements contained in this Lease, other than the obligation to pay Base Rent, and such failure shall continue without Lessee curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, Lessor after ten (10) business days additional written notice to Lessee specifying such failure (or shorter notice if any emergency meaning that there is imminent danger to the safety of persons or of substantial damage to property exists) may (but without any obligation to do so) perform the same for the account and at the expense of Lessee, and the reasonably out-of-pocket amount of any payment made or other reasonable expenses (including reasonable attorneys' fees incurred by Lessor for curing such default), with interest thereon at the rate of twelve percent (12%) per annum or the highest rate then allowed by law whichever is less from the date of Lessee's receipt of written demand until paid, shall be payable by Lessee to Lessor on demand, or, if not so paid, shall be treated at Lessor's option as a monetary default hereunder pursuant to and subject to all of the provisions of Section 10.1 hereof. If Lessor shall fail in the performance of any of its covenants, obligations or agreements contained in this Lease, and such failure shall continue without Lessor curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, Lessee after ten (10) days additional written notice to Lessor specifying

such failure (or shorter notice if any emergency meaning that there is imminent danger to the safety of persons or of substantial damage to property exists) may (but without any obligation to do so) perform the same for the account and at the expense of Lessor, and the reasonable amount of any payment made or other reasonable expenses (including reasonable attorneys' fees incurred by Lessee for curing such default), with interest thereon at the rate of the lesser of twelve percent (12%) per annum or the highest rate then allowed by law, shall be payable by Lessor to Lessee on demand, or, if not so paid, shall be treated at Lessee's option as a default hereunder pursuant to and subject to all of the provisions of Section 11.1 hereof to the extent allowed by law.

14.5 Notices. All notices, demands, payments and other communications required to be given or made hereunder shall be in writing and shall be duly given if delivered by reputable independent courier service providing proof of delivery or reputable overnight courier or if mailed by certified or registered mail, first class postage prepaid, and shall be effectively received upon the date of such delivery or two (2) days after such mailing, to the respective parties hereto at the addresses set forth below, or to such other address furnished in writing to the other Party hereto.

If to Lessee:	Blue Star Stadium Inc. One Cowboys Way Frisco, Texas 75034 Attn: Stephen Jones
With a copy to:	Blue Star Stadium Inc. One Cowboys Way Frisco, Texas 75034 Attn: General Counsel
	Blue Star Stadium Inc. 8000 Warren Parkway #100 Frisco, Texas 75034 Attn: Joe Hickman
And to:	Winstead PC 500 Winstead Building 2728 N. Harwood Street Dallas, Texas 75201 Attn: Denis Braham and Barry Knight
If to Lessor:	City of Frisco 6101 Frisco Square Blvd. Frisco, Texas 75034 Attn: City Manager
With a copy to:	Abernathy, Roeder, Boyd & Joplin, P.C. 1700 Redbud Boulevard, Suite 300 McKinney, Texas 75069 Attn: Robert Roeder and Randy Hullett

If to FISD: Frisco Independent School District
5515 Ohio Drive
Frisco, TX 75035
Attn: Superintendent

With a copy to: Law Offices of Robert E. Luna, P.C.
4411 N. Central Expressway
Dallas, TX 75205
Attn: Elizabeth Donley Nelson

14.6 Successors and Assigns. Except as expressly provided in Article 8, this Agreement may not be assigned without the prior written consent of the other Party hereto. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

14.7 Amendment. Except as expressly provided herein, neither this Lease nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

14.8 Headings and Subheadings. The headings of the articles, sections, paragraphs and subparagraphs of this Lease are for convenience or reference only and in no way define, limit, extend or describe the scope of this Lease or the intent of any provisions hereof.

14.9 Unavoidable Default and Delays. After the date of execution of this Lease, the time within which any Party to this Lease shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed by Force Majeure. The provisions of this Section 14.9 shall not operate to excuse either Party from prompt payment of the Base Rent or any other payments required by the terms of this Lease. If a date falls on a Saturday, Sunday or Holiday, the date of performance shall be the next business day.

14.10 Severability. In the event one or more of the terms or provisions of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

14.11 Governing Law. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES APPLICABLE THERETO AND THE LAWS OF THE STATE OF TEXAS APPLICABLE TO A LEASE EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAW.

14.12 Venue for Actions. The venue for any legal action arising out of this Lease shall lie exclusively in Collin County, Texas.

14.13 Attorneys' Fees. Should either Party to this Lease engage the services of attorneys or institute legal proceedings to enforce its rights or remedies under this Lease, the prevailing Party to such dispute or proceedings shall be entitled to recover its reasonable attorneys' fees, court costs and similar costs incurred in connection with the resolution of such dispute or the institution, prosecution or defense in such proceedings from the other Party.

14.14 Relationship of Parties. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of Lessor and Lessee. It is understood and agreed that this Lease does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

14.15 Net Lease. It is the intention of Lessor and Lessee that the Base Rent payable under this Lease after the Operational Date and all Impositions and other costs related to Lessee's use or operation of the Leased Premises under this Lease (other than amounts as may be required to be paid by Lessor pursuant to specific provisions of this Lease) shall be absolutely net to Lessor, and that Lessee shall pay during the Term, without any offset or deduction whatsoever (except as may otherwise expressly provided in this Lease), all such Impositions and other costs due by Lessee under this Lease (other than amounts as may be required to be paid (directly or indirectly) by Lessor pursuant to specific provisions of this Lease).

14.16 Non-Waiver. No Party shall have or be deemed to have waived any default under this Lease by the other Party unless such waiver is embodied in a document signed by the waiving Party that describes the default that is being waived. Further, no Party shall be deemed to have waived its rights to pursue any remedies under this Lease, unless such waiver is embodied in a document signed by such Party that describes any such remedy that is being waived.

14.17 Obligations to Defend Validity of Agreement. If litigation is filed by a third party against Lessee or Lessor in an effort to enjoin either Party's performance of this Lease, the Parties hereto who are named as parties in such action shall take all commercially reasonable steps to support and defend the validity and enforceability of this Lease. Either Party may intervene in any such matter in which the other Party hereto has been named as a defendant. Each Party shall be responsible for its attorneys' fees and costs of litigation.

14.18 Survival. Covenants in this Lease providing for performance after termination of this Lease shall survive the termination of this Lease.

14.19 Entire Agreement. This Lease (including the Exhibits attached hereto and incorporated herein, if any) and the other documents delivered pursuant to this Lease or referenced herein constitute the full and entire understanding and agreement between the Parties

with regard to the subject matter hereof. There are no representations, promises or agreements of Lessor or Lessee regarding the subject matter of this Lease not contained in this Lease, the Exhibits attached hereto or the other documents delivered pursuant to this Lease or referenced herein.

14.20 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

14.21 Waiver of Consequential Damages. Notwithstanding anything in this Lease, to the contrary, Lessor hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of Lessee or its representatives, agents or employees. Anything to the contrary in this Lease notwithstanding, Lessee hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of Lessor or its representatives, agents or employees.

14.22 Memorandum of Lease Agreement. Upon either Party's request, the other party shall execute and allow such Party to record in Collin County, Texas a Memorandum of Lease Agreement with respect to this Lease. In the event such a memorandum is recorded, the parties agree that upon a termination of this Lease, the parties shall execute and record a termination of such Memorandum of Lease Agreement.

14.23 Lessor's Lien Waiver. Lessor hereby waives all landlord's liens that Lessor might hold, statutory or otherwise, to any of Lessee's (or any Sublessee's) inventory, trade fixtures, equipment or other personal property now or hereafter placed on the Leased Premises.

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WITNESS WHEREOF, the parties hereto have executed and delivered this Lease as of the date first set forth above.

LESSEE

BLUE STAR STADIUM, INC.,
a Texas corporation

By: _____,

LESSOR

CITY OF FRISCO

By:_____
George Purefoy
City Manager

Exhibit A

Land

Legal Description to be completed and attached upon approval of the site plan and conveyance plat of the Land pursuant to the terms of the AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT for Facilities and Related Improvements.

EXHIBIT F

FEDC Performance Agreement

FRISCO ECONOMIC DEVELOPMENT CORPORATION

PERFORMANCE AGREEMENT

This Performance Agreement (this "Agreement") by and between BLUE STAR HQ, INC., a Texas corporation (the "Developer") and the FRISCO ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation ("FEDC"), is made and executed based on the following recitals, terms, and conditions to be effective August 12, 2013 (the "Effective Date"). The Developer and the FEDC are each referred to as a "Party" and collectively as the "Parties".

Words or phrases used in this Agreement that have their initial letters capitalized shall have the meanings given to them in Section 3 unless the context in which the words or phrases are used clearly requires a different meaning.

RECITALS

WHEREAS, the City of Frisco, Texas (the "City") has entered into a Master Development Agreement with Developer dated effective August 12, 2013 (the "Master Agreement") wherein the City will construct a Stadium Facility on the Stadium Tract and will lease the Stadium Facility to Developer under the terms of the Stadium Facility Lease for use by the Dallas Cowboys Football Club, Ltd. as its home training facility during the term thereof; and

WHEREAS, the Master Agreement requires Developer to construct an office facility adjacent to the Stadium Facility to be occupied by the Dallas Cowboys Football Club, Ltd. as its world corporate headquarters (the "Headquarters Facility") on a continuous basis during the term of the Stadium Facility Lease; and

WHEREAS, the Developer has applied to the FEDC for a financial incentive to construct the Headquarters Facility to be located within the Headquarters Tract; and

WHEREAS, the Master Agreement also permits the Developer to construct one or more structured parking facilities containing up to 2,000 parking spaces on the Headquarters Tract and the Mixed Use Tract within the Property to be used for the Stadium Facility and for other parking which will promote new or expanded enterprises within the Property (the "Parking Facilities"); and

WHEREAS, the Developer has applied to the FEDC for financial incentives to construct the Parking Facilities; and

WHEREAS, the FEDC is a Type A economic development corporation operating in the City pursuant to the Development Corporation Act of 1979 (Art. 5190.6, V.C.T.S.), later codified as Chapters 501 through 504 of the Texas Local Government Code, as amended (the

"Act"), and the Texas Non-Profit Corporation Act as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, the Act authorizes the FEDC to participate in economic development programs for the benefit of the City and its present and future citizens, and to enter into agreements to participate financially in economic development activities within and for the City and its citizens; and

WHEREAS, the Act prohibits the provision of a direct incentive unless the FEDC enters into a performance agreement providing, at a minimum: (a) a schedule of additional payroll or jobs to be created or retained by the investment; (b) a schedule of capital investments to be made as consideration for any direct incentives provided by the FEDC; and (c) a provision specifying the terms and conditions upon which repayment must be made if the performance standards are not met; and

WHEREAS, the Board has determined that the financial incentives provided to the Developer for the Projects are consistent with and meet the definitions of "project" and "costs" contained in the Act; and

WHEREAS, the financial incentives are not granted in exchange for goods or services provided by the Developer; and

WHEREAS, the FEDC expects the financial incentives to result in an indirect benefit to the community in the form of increased jobs, sales tax revenues, and ad valorem tax revenues; and

WHEREAS, the Board has made a finding that this Agreement will promote economic development within the City; and

WHEREAS, the Projects and the funding of the costs thereof by the FEDC are necessary to promote or develop new or expanded business enterprises; and

WHEREAS, the financial incentives are restricted to the funding of the Projects as described in this Agreement and the Act; and

WHEREAS, the competitive bidding requirements of State law do not apply to the FEDC or any of the Projects; and

WHEREAS, to secure the financial incentives, the Developer will satisfy performance standards described in this Agreement, and as a result, the incentives will serve a legitimate public purposes and provide a clear public benefit in return; and

WHEREAS, the predominant purpose of this Agreement is to accomplish a public purpose, namely the promotion and development of new and expanded business enterprises to provide and encourage employment and the public welfare and not to benefit private parties; and

WHEREAS, the provisions of this Agreement, including the performance standards and associated penalties ensure that a public purpose is satisfied and the City receives a benefit in return for the financing of Projects by the FEDC; and

WHEREAS, the Board finds that the Projects and costs therefor authorized by this Agreement are required or suitable for the development of a world corporate headquarters facility within the Headquarters Tract and parking facilities within the Headquarters Tract and the Mixed Use Tract; and

WHEREAS, the Board finds that the buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements to be funded under this Agreement for authorized Projects are necessary to promote or develop new or expanded business enterprises within the Property and create Primary Jobs; and

WHEREAS, the Board hereby finds this Agreement benefits the FEDC and the City and on August 12, 2013 approved this Agreement.

NOW THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the FEDC and the Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED. The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration, and promises that bind the Parties.

SECTION 2. TERM. This Agreement shall be effective as of the Effective Date of this Agreement, and shall terminate on the 25th anniversary of the date of the issuance of a certificate of occupancy for the Headquarters Facility by the City.

SECTION 3. DEFINITIONS. The following words shall have the following meanings when used in this Agreement:

"Act" means Chapters 501 through 504, Texas Local Government Code, as amended.

"Agreement" means this Frisco Economic Development Corporation Performance Agreement, together with all exhibits and schedules attached hereto from time to time.

"Board" means the Board of Directors of the FEDC.

"City Debt" means the debt to be issued by the City in an amount, in the aggregate, not to exceed $20,000,000.00, the proceeds of which shall be made available for the construction of the Parking Facilities within the Headquarters Tract and/or the Mixed Use Tract.

"City" means the City of Frisco, Texas, a Texas home-rule municipality.

"Debt Service Payment" means the regular amortized payments required to repay the City Debt.

"Default" is defined in Section 7.

"Developer" means Blue Star HQ, Inc., a Texas corporation, as well as all affiliates, successors, and assigns of Blue Star HQ, Inc..

"Effective Date" means August 12, 2013.

"FCDC" means the Frisco Community Development Corporation, a Type B corporation of the City organized under and operating pursuant to the Act.

"FEDC Debt" means any debt undertaken by the FEDC in order to have available the Maximum Reimbursable Amount required under this Agreement.

"FEDC Sales Tax" means the one-half percent (0.5%) sales and use tax on taxable sales and services within the City that, pursuant to the procedure prescribed in the Act, the voters within the City authorized for levy and collection on behalf of the FEDC for its corporate purposes.

"FEDC Sales Tax Revenue" means the proceeds of the FEDC Sales Tax that are actually received by the FEDC or by the City on behalf of the FEDC from the State Comptroller, from the levy and collection of the FEDC Sales Tax from and after the Effective Date on or with respect to taxable sales and transactions that occur only within the Headquarters Tract and Mixed Use Tract.

"Force Majeure" means any unforeseeable causes beyond the control of either Party hereto, including, but not limited to, casualty, damage, strikes or lockouts, acts of God, war, terrorism, riots, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any governmental or regulatory body other than the City, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the Party seeking the extension or excuse from performance.

"Full-time Employee" means an employee (not employee-equivalent) hired to work a minimum of One Thousand Nine Hundred Fifty (1,950) hours of work over a twelve (12) month term (thirty-seven and one-half hours per week) including allowance for vacation and sick leave, with full company benefits or a Dallas Cowboys Football player and employed on the Property, unless the employee's job function requires traveling.

"Headquarters Facility" means a Class A (non-tilt wall) office building, together with appurtenant infrastructure and parking to be constructed within the Headquarters Tract and continuously occupied (except for reasonable times for remodeling and subject to events of Force Majeure) as the world corporate headquarters of the Dallas Cowboys Football Club, Ltd. and the Dallas Cowboys Cheerleaders, during the Term of the Agreement.

"Headquarters Facility Costs" means the construction costs (including architectural and engineering costs directly associated therewith) actually incurred by Developer for the construction of the Headquarters Facility that are authorized by the Act to be paid from FEDC Sales Tax Revenue.

"Headquarters Tract" means approximately five (5) acres of land located within the Property that will be conveyed by the FCDC to Developer, the exact legal description of which shall be determined by a plat thereof approved by the City and recorded in the Map and Plat Records of Collin County, Texas, and appended to this Agreement prior to the obligation of the FEDC to reimburse any Headquarters Facility Costs.

"Master Agreement" means the AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT entered into by the City, Developer, Blue Star Frisco, L.P. and Blue Star

Stadium, Inc. dated August 12, 2013, that provides for the development of improvements on the Property.

"Maximum Reimbursable Amount" means an amount not to exceed Twenty Five Million Dollars ($25,000,000.00) less any issuance costs to be used by the FEDC to reimburse Developer for the qualified Headquarters Facility Costs.

"Mixed Use Tract" means approximately 66 acres of land located within the Property to be purchased by Developer or others from the FCDC and developed in a manner that will promote new or expanded enterprises and create Primary Jobs, the exact legal description of which shall be determined by a plat thereof approved by the City and recorded in the Map Records of Collin County, Texas, and appended to this Agreement.

"Parking Facilities" means one or more structured parking facilities within the Mixed Use Tract and/or the Headquarters Tract, not to exceed 2,000, which are intended to be used by patrons of the Stadium Facility and to develop and promote new or expanded enterprises within the Mixed Use Tract and the Headquarters Tract that are financed by City Debt.

"Primary Job" means primary job, as defined by Section 501.002(12) of the Act.

"Projects" means the Headquarters Facility and the Parking Facilities.

"Property" means the property described by metes and bounds on ***Exhibit A***.

"Significant Contracts" means contracts for the construction of improvements which are valued at $5,000,000 or more.

"Stadium Facility" means the improvements constructed by the City on the Stadium Tract as described in the Master Agreement.

"Stadium Facility Lease" means the lease between the City and Blue Star Stadium, Inc. for the use of the Stadium Facility by the Dallas Cowboys Football Club, Ltd., as the home training facility of the Dallas Cowboys.

"Stadium Tract" means approximately 20 acres of land located within the Property that will be conveyed by the FCDC to the City as provided in the Master Agreement.

"State Comptroller" means the Office of the Texas Comptroller of Public Accounts, or any successor agency.

SECTION 4. REIMBURSEMENT OF HEADQUARTERS FACILITY COSTS.

(a) Notwithstanding any provision contained in this Agreement to the contrary, the maximum aggregate reimbursement of Headquarters Facility Costs by the FEDC shall not exceed Twenty Five Million Dollars ($25,000,000.00) less any issuance costs (the "Maximum Reimbursable Amount").

(b) As a condition to the obligation of the FEDC to reimburse Developer for Headquarters Facility Costs, the Developer shall submit to the FEDC for its review and approval, which

approval shall not be unreasonably withheld, a copy of the site plan for the Headquarters Facility, a copy of the plans and specifications for the construction of the Headquarters Facility, a copy of the fully executed contract with the architect/engineer for the Headquarters Facility (the "Architect Contract") and a copy of the fully executed construction contract(s) that contains either a stated lump sum or a guaranteed maximum price for the Headquarters Facility (the "Construction Contract" and together with the Architect Contract, the "Contracts"). From time to time, but no less often than monthly, the FEDC and Developer shall determine the total value of the Contracts based upon the estimates prepared by the architect and/or contractor prior to construction and on the actual contracted values after commencement of construction, and if at any time the total value of the Contracts (the "Total Value") exceeds the Maximum Reimbursable Amount, the reimbursements made by the FEDC from time to time for Headquarters Facility Costs shall be a percentage of the actual Headquarters Facility Costs computed by dividing the Maximum Reimbursable Amount by the Total Amount; and the Headquarters Facility Costs not included in such reimbursement, from time to time, shall be paid by the Developer. In the event the Total Value does not exceed the Maximum Reimbursable Amount, the reimbursements made by the FEDC from time to time for Headquarters Facility Costs shall be equal to the portion of the Headquarters Facility Costs for which such reimbursement is requested, subject to the provisions hereof.

(c) Subject to the provisions of (b) above and unless otherwise authorized by the FEDC in writing, the FEDC shall reimburse Developer for up to $3,750,000.00 for costs of architectural and engineering services directly related to the Headquarters Facility incurred after the receipt by Developer of the Headquarters Tract from the FCDC and the issuance of the FEDC Debt no more frequently than once a month based upon the submittal to the FEDC of an Application for Reimbursement in the form attached hereto as ***Exhibit B*** ("Application for Reimbursement") together with invoices received by Developer evidencing expenditures relating to Headquarters Facility Costs, together with such supporting documentation as reasonably requested by the FEDC. The President of the FEDC, or his designee, shall review the Application for Reimbursement, invoices and supporting documentation and shall approve or deny the expenditures as appropriate Headquarters Facility Costs within forty-five (45) days.

(d) Subject to the provisions of (b) above, the FEDC shall reimburse Developer for actual construction costs directly related to the construction of the Headquarters Facility no more frequently than once a month based upon the submittal to the FEDC of an Application for Reimbursement with applications for payment received and approved by Developer and Developer's architect/engineer from the contractor or contractors responsible for the construction of the Headquarters Facility and such supporting documentation as reasonably requested by the FEDC. The President of the FEDC, or his designee, shall review the Application for Reimbursement, applications for payment and supporting documentation and shall approve or deny the expenditures as appropriate Headquarters Facility Costs and submit payment of those expenditures approved within forty-five (45) days of receipt of such Application for Reimbursement.

(e) In the event the President of the FEDC, or his designee, shall deny any expenditure contained in an invoice or application for payment submitted for reimbursement, the President of the FEDC, or his designee, shall notify the Developer in writing identifying the expenditure

denied and the basis of his objection thereto. The Parties shall work cooperatively to resolve such objections within thirty (30) days after written notice of such objection is given. If the objections cannot be resolved within thirty (30) days, the Parties agree to submit the objections for dispute resolution pursuant to procedures approved by the Parties; and if such procedures cannot be agreed upon, the Parties may avail themselves of the remedies in Section 7.

SECTION 5. REIMBURSEMENT OF THE PARKING FACILITIES COSTS.

(a) Under the terms of the Master Agreement, the City has agreed to create a new tax increment reinvestment zone ("TIRZ #5") to encompass the Headquarters Tract and the Mixed Use Tract. The City has further agreed to sell up to Twenty Million Dollars ($20,000,000.00) in City Debt, repayable on a regular amortized basis over twenty five (25) years. The proceeds from the sale of the City Debt will be used by the City to construct the Parking Facilities. All revenues collected by TIRZ #5 (the "TIRZ #5 Revenue") will be used first to pay the debt service payments on the City Debt (each a "Debt Service Payment") as each Debt Service Payment comes due. The Developer will be responsible for remitting to the City within twenty (20 days after the date of payment by the City of each Debt Service Payment the difference between the Debt Service Payment amount and the amount of TIRZ #5 revenue available to be applied to the Debt Service Payment (the "Developer Payment"). It is anticipated that as the ad valorem tax values within TIRZ #5 increase, the TIRZ #5 Revenue available to pay each Debt Service Payment will increase and the Developer Payment obligation will decrease until at some point in the future the TIRZ #5 Revenue will be sufficient to cover each Debt Service Payment.

(b) In the event the City constructs the Parking Facilities and the Developer makes Developer Payments, the FEDC shall reimburse Developer an amount, computed as to each Developer Payment, equal to the lesser of: (1) one-half of the FEDC Sales Tax Revenue (0.25% of sales and use taxes) collected on sales and other transactions within the Headquarters Tract and the Mixed Use Tract by the FEDC during the amortized period covered by such Developer Payment (such period of time being a "Debt Service Payment Period"), or (2) one-half of the Developer Payment (the "FEDC Sales Tax Reimbursement").

(c) The FEDC Sales Tax Reimbursement shall be paid by the FEDC to Developer within forty-five (45) days following receipt by the FEDC of the FEDC Sales Tax Revenue for the Debt Service Payment Period and an application for reimbursement from the Developer certifying the amount of the Developer Payment.

(d) Developer authorizes the FEDC or the City to request sales and use tax information from the State Comptroller pursuant to Section 321.3022 of the Texas Tax Code, as amended, and to obtain an "Area Report" from the State Comptroller that identifies sales and use tax information relating to the Headquarters Tract and the Mixed Use Tract. The Developer agrees upon request to assist the FEDC and the City in obtaining sufficient taxpayer information to request such reports. The FEDC hereby agrees to keep this information confidential consistent with Section 321.3022(f) of the Texas Tax Code. The FEDC reserves the right to conduct audits of the sales and use tax records of businesses located in the Headquarters Tract and the Mixed Use Tract to the extent the sales tax information is not available or discernable from an "Area Report".

SECTION 6. OBLIGATIONS OF THE DEVELOPER.

(a) Developer shall use commercially reasonable efforts to have the Headquarters Facility completed and a certificate of occupancy received from the City no later than January 1, 2017, subject to Force Majeure delays and delays approved by the City and FEDC.

(b) At least $25,000,000.00 in Headquarters Facility Costs shall be expended to construct the Headquarters Facility.

(c) The Headquarters Facility shall be occupied by the Dallas Cowboys Football Club, Ltd., as its world corporate headquarters, and as the corporate office of the Dallas Cowboys Cheerleaders throughout the Term of this Agreement.

(d) On January 1 of the first calendar year after the Headquarters Facility is completed and throughout the Term of the Agreement, employment for a minimum of 150 Full-Time Jobs shall be provided on the Property by the Developer and the Dallas Cowboys Football Club, Ltd., or their affiliates.

(e) Developer, the Dallas Cowboys Football Club, Ltd., and the Dallas Cowboys Cheerleaders shall recognize the City as the home training facility and world corporate headquarters of the Dallas Cowboys and Dallas Cowboys Cheerleaders in all reference and promotional materials, videos, films and interviews and will cooperate with the FEDC and City in licensing the FEDC and/or City to utilize logos, drawings, pictures and other materials in print and media presentations developed by or for the FEDC and/or City.

(f) Developer shall cause its general contractor and subcontractors involved in the construction of the Headquarters Facility and the Parking Facilities, and shall contractually require any builder or developer within the Mixed Use Tract involved in a Significant Contract, to use separated building materials and labor contracts in a manner that allows the situs of any sales taxes paid on the building materials for those projects to be in the City and conforms to the reporting procedures set forth herein. For each Significant Contract, the contractor shall maintain a current summary of separated costs in each of the three categories: taxable materials, tax, nontaxable categories (including overhead & profit) and shall submit a total value for each of these categories upon request by the FEDC. For the Headquarters Facility Project and the Parking Facilities, Developer shall include the summary of separated costs with the Application for Reimbursement.

(g) The Developer will certify and provide in the form attached hereto as Exhibit C, to the extent necessary, Developer records, documents, agreements, construction contracts both at the prime and sub-contractor level, and other instruments in furtherance of the following purposes: (i) to insure Developer's compliance with the affirmative covenants as set forth within the Performance Agreement; (ii) to determine the existence of an event of default; (iii) to insure compliance with any terms or conditions set forth in the Agreement or related documents. Developer will provide reports certifying the status of compliance and any other relevant information until the termination of the Agreement.

(h) Although not an event of default or condition of any reimbursement hereunder, the Developer agrees to endeavor to actively participate in community and charitable organizations and/or activities, the purpose of which are to improve the quality of life in the City of Frisco,

Texas, and to actively encourage its employees to be involved in such organizations and/or activities.

(i) Although not an event of default or condition of any reimbursement hereunder, the FEDC requests that Developer, and its affiliates, endeavor to satisfy its need for all additional employees from Frisco residents and purchase all materials, supplies and services necessary to effect the occupancy of the Headquarters Facility from Frisco merchants and businesses. The FEDC also requests that Developer use reasonable efforts to place Developer-managed hotel room nights related to Developer's business at hotel facilities located in the City whenever practicable.

(j) The Developer shall perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Developer and the FEDC, and shall perform and comply with all terms, conditions, and provisions of the Master Agreement.

(k) The Developer covenants and agrees that this Agreement does not violate Section 501.161 of the Texas Local Government Code, as amended.

SECTION 7. DEFAULT REMEDIES.

(a) If any Party fails to perform any material covenant required by this Agreement, the other Party may give written notice of such failure to the non-performing Party, which notice shall describe in reasonable detail the nature of the failed performance. If the non-performing Party does not cure or remedy the failed performance within a reasonable period of time after the notice is given (taking into consideration the nature of the failed performance, but in no event more than ninety (90) days after the notice is given), then the non-performing Party shall be in "Default" under this Agreement.

(b) In addition to the Defaults described in Section 7(a), the Developer is in default if it becomes delinquent in the payment of any ad valorem taxes or sales taxes owed to the City and such delinquencies, including penalties and interest, are not paid in full within sixty (60) days after written notice of such delinquencies is given. If the Developer is in Default under this Section 7(b), the FEDC may pursue any remedies available at law or in equity (excluding termination of this Agreement) including, but not limited to, exercise of the right of off-set against any amounts to which the Developer is entitled under this Agreement.

(c) If the Developer is in Default with respect to Sections 7(a) or 7(b), the FEDC may (i) terminate any future incentive payments due Developer under this Agreement, and (ii) require, at the FEDC's sole discretion, either (1) the Developer to pay the FEDC the Unrealized Value of the incentives paid to Developer for the Headquarters Facility, or (2) the Developer to convey by special warranty deed to the FEDC the Headquarters Facility free of liens and encumbrances. For purposes hereof, the term Unrealized Value shall mean an amount equal to the outstanding balance computed as of the first of the month following the date of the Default of a note in the original principal sum equal to the total dollar amount of Headquarters Facility Costs reimbursed by the FEDC to Developer for the Headquarters Facility amortized in equal monthly payment over twenty-five (25) years at five percent (5%) per annum.

(d) If the FEDC is in Default, the Developer may enforce specific performance of this Agreement.

SECTION 8. REPRESENTATIONS OF THE FEDC.

(a) The FEDC is duly authorized, created, and existing in good standing under the laws of the State of Texas and is qualified and authorized to implement and conduct the functions and actions contemplated by this Agreement.

(b) The FEDC has the power, authority, and legal right to enter into and perform its obligations under this Agreement; and the execution, delivery, and performance of those obligations has been duly authorized; will not, to the best of the FEDC's knowledge, violate any applicable judgment, order, law, or regulation; and does not constitute a default under, or result in the creation of, any lien, charge, encumbrance, or security interest upon any of the FEDC's assets under any agreement or instrument to which the FEDC is a party, or by which the FEDC or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed and delivered by the FEDC and constitutes a legal, valid, and binding obligation of the FEDC enforceable in accordance with its terms.

(d) The execution, delivery, and performance of this Agreement by the FEDC do not require the consent or approval of any person or entity that has not already been obtained.

SECTION 9. REPRESENTATIONS OF THE DEVELOPER.

(a) Blue Star HQ, Inc., is a Texas corporation duly authorized, created, and existing in good standing under the laws of the State of Texas.

(b) The Developer has the power, authority, and legal right to enter into and perform its obligations under this Agreement, and the execution, delivery, and performance of those obligations has been duly authorized; will not, to the best of the Developer's knowledge, violate any applicable judgment, order, law, or regulation applicable to the Developer; and does not constitute a default under, or result in the creation of, any lien, charge, encumbrance, or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party, or by which the Developer or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed, and delivered by the Developer and constitutes a legal, valid, and binding obligation of the Developer enforceable in accordance with its terms.

(d) The execution, delivery, and performance of this Agreement by the Developer do not require the consent or approval of any person or entity that has not already been obtained.

SECTION 10. ADDITIONAL PROVISIONS.

(a) This Agreement and the Master Agreement constitute the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. Except as provided in this

Section 10(a), no alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment. No course of dealing on the part of any Party or failure or delay by any Party with respect to the exercise of any right, power, or privilege under this Agreement shall operate as a waiver thereof.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Collin County, Texas.

(c) The Developer has the right to assign this Agreement in whole, including all obligations, rights, title, and interests of the Developer under this Agreement, and to assign this Agreement in part, with respect to any obligations of the Developer under this Agreement, to any affiliate (i.e., an entity that controls, is controlled by, or is under common control with the Developer) without the consent of FEDC and to any other entity only with the consent of the FEDC, which consent may be withheld in its sole discretion.

(d) This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto or to any assignment hereof.

(e) Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

(f) This Agreement is a contract made under, and shall be construed in accordance with and governed by, the laws of the United States of America and the State of Texas.

(g) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(h) If the performance by any Party of its obligations under this Agreement is delayed due to unexpected circumstances beyond the reasonable control of such Party, then such Party shall be excused from performance during the period that such circumstances continue so long as such Party is diligently and continuously seeking to eliminate the circumstances or otherwise resume performance in spite of such circumstances.

(i) Any notice or other communication required or permitted by this Agreement (a "Notice") is effective when in writing (i) and personally delivered by any nationally recognized delivery service such as FedEx or UPS, or (ii) three (3) days after the Notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows or, in the case of a change of address, as provided in a Notice notifying the other Party of such address change:

To the Developer:

Blue Star HQ, Inc.
One Cowboys Parkway
Irving, Texas 75063
Attention: Stephen Jones

With a copy to:

Blue Star HQ, Inc.
8000 Warren Parkway #100
Frisco, Texas 75034
Attention: Joe Hickman

and

Blue Star HQ, Inc.
One Cowboys Parkway
Irving, Texas 75063
Attention: General Counsel

and

Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attention: Denis Braham and Barry Knight

To the FEDC:

Frisco Economic Development Corporation
Attn: James L. Gandy, CEcD, CCIM
President
6801 Gaylord Parkway, Suite 400
Frisco, TX 75034

With a Copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.
Attn: Robert H. Roeder and Randy Hullett
1700 Redbud Blvd., Suite 300
McKinney, TX 75069

(j) If a court finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render the provision invalid or unenforceable as to any other persons or circumstances. To the extent feasible, any provision found to be invalid or unenforceable shall be deemed to be modified to be valid and enforceable; however, if the provision cannot be so modified, it shall be stricken from this Agreement, and all other provisions of this Agreement shall remain valid and enforceable and unaffected by the stricken provision.

(k) Where the context permits, words used in this Agreement in the singular also include the plural and vice versa, and the definitions of such words in the singular also apply to such words when used in the plural and vice versa.

(l) Time is of the essence in the performance of this Agreement.

(m) The Board shall authorize the Board's President to execute this Agreement on behalf of the FEDC.

(n) The FEDC is not required by State law to comply with the competitive bidding requirements applicable to the City.

(o) The Developer certifies that it does not and will not knowingly employ an undocumented worker (in accordance with Chapter 2264 of the Texas Government Code, as amended) in connection with the performance of any of its respective obligations under this Agreement. If during the Term of this Agreement, the Developer is convicted of a violation under 8 U.S.C. § 1324a(f), the Developer shall repay the amount of the public subsidy provided under this Agreement as required by law. Pursuant to Section 2264.101, Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

(p) Once the legal description of the Headquarters Tract is appended to this Agreement as provided in Section 3 herein, the Parties will execute and record in the Real Property Records of Collin County a Memorandum of Agreement with the property description attached as evidence, in part, of the Parties' obligations and rights herein.

(q) The following exhibits are attached hereto and incorporated herein for all purposes:

Exhibit A – Metes and Bounds Description of the Property
Exhibit B – Form of Application for Reimbursement
Exhibit C – Certificates of Compliance

DEVELOPER:

Blue Star HQ, Inc.,
a Texas corporation

By: _____
Name: _____
Title: _____

FEDC:

Frisco Economic Development Corporation, a Texas non-profit corporation

By: _____
James L. Gandy, President

ATTEST:

_____
Secretary

EXHIBIT A
(Metes and Bounds Description of the Property)

Legal description of the Property to be completed and attached upon approval of the site plan and conveyance plat of the Property pursuant to the terms of the Frisco Community Development Corporation Performance Agreement.

EXHIBIT B
(Form of Application for Reimbursement)

This Application for Reimbursement (this "Application") is submitted to the FEDC by ___ _____ ("Developer") under the provisions of that certain Frisco Economic Development Performance Agreement dated August 12, 2013, entered into between the FEDC and Developer (the "Agreement"). All capitalized terms used and not defined in this Application shall have the meaning assigned thereto in the Agreement.

The period covered by this Application is from _____ through _____.

1. Schedule A attached hereto reflects: (i) amounts incurred or paid by the Developer for Headquarters Facility Costs and Parking Facilities Costs authorized under the Agreement and the Act.

2. Amounts recorded on Schedule A by the Developer are eligible for reimbursement by the FEDC under the Agreement and the Act.

3. Each amount recorded on Schedule A is accompanied by a true and correct invoice or an appropriate AIA Application For Payment and Certificate form approved by Developer and architect/engineer and such other information as has been requested by the FEDC.

4. Schedule B attached hereto is a true and complete Separated Materials Sales Tax Report Form for the period covered by this Application.

5. Schedule C attached hereto is a true and complete Verification of Sales Tax Payments for the period covered by this Application.

By its execution hereof, Developer certifies that (i) it is in compliance with all of its obligations required under the Agreement; (ii) it is not in default of any of the terms of the Agreement; and (iii) all information contained with this Application is true and correct.

DEVELOPER

By: _____

Subscribed and sworn to before me this [Enter Day] day of July, 2013.

_____
NOTARY PUBLIC

Schedule A
(AIA Application For Payment and Certificate)

Schedule B

SEPARATED MATERIALS SALES TAX REPORT FORM _____

Reporting Date	Name of Vendor	Cost of Goods Sold	Sales Tax Owed to City of Fusco

Schedule C

FRISCO
TEXAS

Verification of Sales Tax Payments

FEDC Agreement Name: _____

Date of Agreement: _____

Entity That Paid Tax

Payor Legal Name: _____

Payor Texas Sales Tax Number: _____

Date Payor Made Payment: _____

Ref. Number of Document That Was Paid: _____

Amount of Separated Materials: _____

Amount of State Sales Tax Paid: _____

Amount of Frisco City Sales Tax Paid: _____

Amount of Other Sales Tax Paid (identify jurisdictions) _____

Entity That Remitted Tax to Texas Comptroller

Reporting Entity's Legal Name: _____

Reporting Entity's Texas Sales Tax Number: _____

Report Period of Tax Payment to Texas Comptroller: _____

Date of Report Filing: _____

Amount of Tax Base Reported: _____

Amount of State Sales Tax Reported: _____

Amount of Frisco City Sales Tax Reported: _____

Amount of Other Sales Tax Reported (identify jurisdictions): _____

Date Report Received by FEDC: _____

Date Report Submitted to City of Frisco Finance Department: _____

FRISCO ECONOMIC DEVELOPMENT CORPORATION
6801 GAYLORD PARKWAY . SUITE 400 . FRISCO, TX 75034 . 972.292-5150 . FAX 972-292-5166 . WWW.FRISCOEDC.COM

EXHIBIT C
(Certificates of Compliance)

FRISCO ECONOMIC DEVELOPMENT CORPORATION

AND

_____

CERTIFICATE OF COMPLIANCE INFORMATION

FOR

ECONOMIC INCENTIVES

Section 4(b) Documentation of an executed contract between the Developer and the architect/engineer for the Headquarters Facility and a copy of the fully executed construction contract that contains either a stated lump sum or a guaranteed maximum price for the Headquarters Facility; and

Documentation provided to the FEDC will include the following:

- *Copies of pertinent page(s) from the contracts which indicate the name of the parties, the terms of the contracts, and a copy of the signature page(s) of the contracts.*
- *The information listed above will be provided with the completed and certified Certificate of Compliance for Economic Incentives.*

Section 6(a) Documentation of receipt of a permanent Certificate of Occupancy ("CO") for the Headquarters Facility on or before January 1, 2017; and

Documentation provided to the FEDC will include the following:

- *A copy of the CO (Certificate of Occupancy) for the Headquarters Facility in the City of Frisco, Texas.*
- *The CO must be dated on or before January 1, 2017 (subject to "force majeure" delays and delays approved by the City and FEDC).*
- *The information listed above will be provided with the completed and certified Certificate of Compliance for Economic Incentives.*

Section 6(b) Documentation of the Headquarters Facility Cost of the Project, excluding the land value, of at least Twenty-Five Million and No/100th Dollars ($25,000,000.00) on or before January 1, 2017; and

Documentation provided to the FEDC will include the following:

- *For purposes of this Certificate, "Headquarters Facility Cost" shall be the sum of all soft and hard costs, excluding land, related to the construction and completion of the Headquarters Facility. Headquarters Facility Cost shall be determined through the FEDC's review of the construction permits filed with the City of Frisco for the Headquarters Facility.*
- *Copies of the Commercial Building Permits issued by the City of Frisco for construction of the Headquarters Facility.*
- *Copies of any other construction permits issued by the City of Frisco relating to the Headquarters Facility.*
- *The Headquarters Facility Cost must be at least $25M tallied from amounts indicated on the various Building Permits issued by the City of Frisco, Texas.*
- *The Headquarters Facility Cost reported at this compliance submission is: $_____.*
- *The eligibility expiration date for this performance requirement is January 1, 2017.*
- *The information listed above will be provided with the completed and certified Certificate of Compliance for Economic Incentives.*

Section 6(c) Documentation that the Headquarters Facility is being continuously occupied by the Dallas Cowboys Football Club, Ltd., as its world headquarters, and continuously occupied as the corporate office of the Dallas Cowboys Cheerleaders throughout the term of the Agreement; and

Documentation provided to the FEDC will include the following:

- *Copies of pertinent page(s) from the Developer's leases or other agreements evidencing the right to occupy and the actual occupancy of the Headquarters Facility by the Dallas Cowboys Football Club, Ltd., and the Dallas Cowboys Cheerleaders.*
- *The information listed above will be provided with the completed Certificate of Compliance for Economic Incentives.*

Section 6(d) Documentation that the Developer and/or the Dallas Cowboys Football Club, Ltd. have created, staffed and maintained employment of at least one hundred fifty (150) full-time employees in the Headquarters Facility on or before January 1 of the first calendar year after the CO is issued for the Headquarters Facility and throughout the term of the Agreement; and

Documentation provided to the FEDC will include the following:

- *For the purposes of this Agreement, a "full-time employee" is defined as an employee customarily described as a full-time employee in the industry and locale where the Project is located, but in any event works a minimum of One Thousand Nine Hundred Fifty (1,950) hours of work over a twelve (12) month term (thirty-seven and one-half (37.50) hours per week) and qualifies for allowances for vacation and sick leave, with full company benefits, or a Dallas Cowboys Football player, and is employed exclusively and on-site at the Developer's Property in the City of Frisco, Texas.*
- *Full-time employees whose primary office is at the Headquarters Facility but who travel from time to time to visit, oversee, and supervise other facilities and/or visit or call on customers of the Developer or the Dallas Cowboys Football Club, Ltd., or a Dallas Cowboys Football player, shall be deemed to be exclusively and on-site at the Headquarters Facility.*
- *Part-time employees whether permanent or temporary, transient or contract employees shall NOT be included in determining the Developer's total number of "full-time" employees.*
- *An employee roster for the Developer listing the employee's name, date of hire, termination date, work status (i.e. full-time, part-time, or contract employee), at the Developer's office in the City of Frisco for the current eligibility period.*
- *The Developer division assignment for each employee at the Developer and/or its affiliates and/or parent entities located at the Headquarters Facility in the City of Frisco must be indicated on the employee roster.*
- *The employee roster will include ALL employees assigned to the Headquarters Facility located in the City of Frisco, Texas for the eligibility period.*
- *The number of full-time employees at this compliance submission is: one hundred fifty (150).*
- *The information listed above will be provided in addition to the completed and certified Certificate of Compliance for Incentives.*

Section 6(e) Documentation evidencing that the Developer, the Dallas Cowboys Football Club, Ltd., and the Dallas Cowboys Cheerleaders recognize the City of Frisco as the home

training facility and the world headquarters of the Dallas Cowboys Football Club, Ltd. and the Dallas Cowboys Cheerleaders; and

Documentation provided to the FEDC will include the following:

- *Copies of reference and promotional materials, videos, films, interviews and related materials that demonstrate that the City of Frisco is recognized as the location of the world headquarters.*
- *The information listed above will be provided in addition to the completed and certified Certificate of Compliance for Incentives.*

Section 6(g) Compliance Documentation must be submitted as required by Section 6(g) of the Performance Agreement.

- *The Certificates of Compliance (Exhibit A) and supporting documents must be submitted to the FEDC not more than thirty (30) days from the eligibility expiration date cited for each Economic Incentive.*

FRISCO ECONOMIC DEVELOPMENT CORPORATION

AND

_____

CERTIFICATE OF COMPLIANCE FOR ECONOMIC INCENTIVES

I hereby certify that according to **Section 4(d)** that _____ executed a contract with _____ (architect/engineer) for the Headquarters Facility and a contract with _____ for the construction of the Headquarters Facility that contains either a stated lump sum or a guaranteed maximum price for the Headquarters Facility. The Developer has provided the required documentation to the FEDC for review.

YES ☐ NO ☐

If NO, reason for Non-Attainment: _____

_____

_____

I hereby certify that according to **Section 6(a)** that the Developer has received a Certificate of Occupancy ("CO") for the Headquarters Facility on or before January 1, 2017. The Developer has provided the required documentation to the FEDC for review.

YES ☐ NO ☐

If NO, reason for Non-Attainment: _____

_____

_____

I hereby certify that according to **Section 6(b)** that Developer has provided documentation to the FEDC for review which includes copies of the Commercial Building Permits issued by the City of Frisco, Texas for construction of the Headquarters Facility. The Company has provided copies of all other construction permits issued by the City of Frisco relating to the Headquarters Facility. The "Headquarter Facility Cost" must be at least $25M indicated on the Commercial Building Permits for construction and improvements within the City of Frisco, Texas. The reported Headquarter Facility Cost is: $_____. Developer has provided the required documentation to the FEDC for review.

YES ☐ NO ☐

If NO, reason for Non-Attainment: _____

_____

_____

I hereby certify that according to **Section 6(c)** that the Headquarters Facility is being continuously occupied by the Dallas Cowboys Football Club, Ltd., as its world headquarters, and continuously occupied as the corporate office of the Dallas Cowboys Cheerleaders throughout the term of the Agreement. Developer has provided the required documentation to the FEDC for review.

YES ☐ NO ☐

If NO, reason for Non-Attainment: _____

_____

I hereby certify that Developer has complied with the requirements of **Section 6(d)** as specified in the Performance Agreement that the Company and/or its affiliates and/or parent entities have created, staffed and maintained at least 150 full-time jobs at the Headquarters Facility in the City of Frisco, Texas on or before January 1 of the first calendar year after the CO is issued for the Headquarters Facility throughout the terms of the Performance Agreement, based on the definition of a full-time employee as cited in the Performance Agreement. The number of full-time employees is _____. Developer has provided the required documentation to the FEDC for review.

YES ☐ NO ☐

If NO, reason for Non-Attainment: _____

_____

_____

I hereby certify that Developer has complied with the requirements of **Section 6(e)** as specified in the Performance Agreement by providing documentation evidencing that the Developer, the Dallas Cowboys Football Club, Ltd., and the Dallas Cowboys Cheerleaders recognize the City of Frisco as the home training facility and the world headquarters of the Dallas Cowboys Football Club, Ltd. and the Dallas Cowboys Cheerleaders.

YES ☐ NO ☐

If NO, reason for Non-Attainment: _____

_____

_____

I hereby certify that I am a duly authorized representative of Developer to execute this Certificate of Compliance for the Frisco Economic Development Corporation.

ATTEST:

BY: _____
NAME – SIGNATURE

_____
NAME – PRINTED

_____ _____
TITLE **DATE**

STATE OF _____

COUNTY OF _____

Sworn to and subscribed to before me on the ___ day of _____, 20_____, by _____.

_____
_____
NOTARY NAME

NOTARY PUBLIC STATE OF _____

This completed Certificate of Compliance and attachments should be mailed or delivered to:

Frisco Economic Development Corporation
ATTN: Julie Floyd
6801 Gaylord Parkway, Suite 400
Frisco, Texas 75034
Phone: 972.292.5159

EXHIBIT G

FCDC Performance Agreement

FRISCO COMMUNITY DEVELOPMENT CORPORATION

PERFORMANCE AGREEMENT

This Performance Agreement (this "Agreement") by and between BLUE STAR HQ, INC., a Texas corporation (the "Developer"), BLUE STAR FRISCO, L.P., a Texas limited partnership ("Blue Star Frisco") and the FRISCO COMMUNITY DEVELOPMENT CORPORATION, a Texas non-profit corporation ("FCDC"), is made and executed based on the following recitals, terms, and conditions to be effective August 12, 2013 (the "Effective Date"). The Developer and the FCDC are each referred to as a "Party" and collectively as the "Parties".

Words or phrases used in this Agreement that have their initial letters capitalized shall have the meanings given to them in Section 3 unless the context in which the words or phrases are used clearly requires a different meaning.

RECITALS

WHEREAS, the FCDC is the owner of approximately 91 acres of land located in the City of Frisco, Texas (the "City"), that is more particularly described in ***Exhibit A*** attached hereto and incorporated herein for all purposes (the "Property"); and

WHEREAS, the City has entered into a Master Development Agreement with Developer dated effective August 12, 2013 (the "Master Agreement") wherein the City will construct a Stadium Facility on the Stadium Tract and will lease the Stadium Facility to Developer under the terms of the Stadium Facility Lease for use by the Dallas Cowboys Football Club, Ltd. as its home training facility during the term thereof; and

WHEREAS, the Master Agreement requires Developer to construct an office facility adjacent to the Stadium Facility to be occupied by the Dallas Cowboys Football Club, Ltd. as its world corporate headquarters (the "Headquarters Facility") on a continuous basis during the term of the Stadium Facility Lease; and

WHEREAS, the Developer has applied to the FCDC for a financial incentive in the form of a conveyance of fee simple title to the Headquarters Tract on which Developer will construct the Headquarters Facility; and

WHEREAS, the Master Agreement also permits the Developer to construct one or more structured parking facilities containing up to 2,000 parking spaces on the Headquarters Tract and the Mixed Use Tract within the Property to be used for the Stadium Facility and other parking which will promote new or expanded enterprises within the Property (the "Parking Facilities"); and

WHEREAS, the Developer has applied to the FCDC for financial incentives in the form of reimbursements of portions of Developer's costs to construct the Parking Facilities; and

WHEREAS, the Master Agreement grants to the Blue Star Frisco the option to purchase the Mixed Use Tract and, if purchased, to use reasonable commercial efforts to develop a Class A office and entertainment district thereon; and

WHEREAS, Blue Star Frisco has applied to the FCDC for a financial incentive in the form of fixing the option price for the Mixed Use Tract at a price equal to the FCDC's cost basis; and

WHEREAS, the FCDC is a Type B economic development corporation operating in the City pursuant to the Development Corporation Act of 1979 (Art. 5190.6, V.C.T.S.), later codified as Chapters 501 through 505 of the Texas Local Government Code, as amended (the "Act"), and the Texas Non-Profit Corporation Act as codified in the Texas Business Organizations Code, as amended; and

WHEREAS, the Act authorizes the FCDC to participate in economic development programs for the benefit of the City and its present and future citizens, and to enter into agreements to participate financially in economic development activities within and for the City and its citizens; and

WHEREAS, the Act prohibits the provision of a direct incentive unless the FCDC enters into a performance agreement providing, at a minimum: (a) a schedule of additional payroll or jobs to be created or retained by the investment; (b) a schedule of capital investments to be made as consideration for any direct incentives provided by the FCDC; and (c) a provision specifying the terms and conditions upon which repayment must be made if the performance standards are not met; and

WHEREAS, the Board has determined that the financial incentives provided to the Developer for the Projects are consistent with and meet the definitions of "project" and "costs" contained in the Act; and

WHEREAS, the financial incentives are not granted in exchange for goods or services provided by the Developer; and

WHEREAS, the FCDC expects the financial incentives to result in an indirect benefit to the community in the form of increased jobs, sales tax revenues, and ad valorem tax revenues; and

WHEREAS, the Board has made a finding that this Agreement will promote economic development within the City; and

WHEREAS, the Projects and the funding of the costs therefor by the FCDC are necessary to promote or develop new or expanded business enterprises; and

WHEREAS, the financial incentives are restricted to the funding of Projects as described in this Agreement and the Act; and

WHEREAS, the competitive bidding requirements of State law do not apply to the FCDC or any of the Projects; and

WHEREAS, to secure the financial incentives, the Developer will satisfy performance standards described in this Agreement, and as a result, the incentives will serve a legitimate public purposes and provide a clear public benefit in return; and

WHEREAS, the predominant purpose of this Agreement is to accomplish a public purpose, namely the promotion and development of new and expanded business enterprises to provide and encourage employment and the public welfare and not to benefit private parties; and

WHEREAS, the provisions of this Agreement, including the performance standards and associated penalties, ensure that a public purpose is satisfied and the City receives a benefit in return for the financing of the Projects by the FCDC; and

WHEREAS, the Board finds that the Projects and costs thereof authorized by this Agreement are required or suitable for the development of a world corporate headquarters facility within the Headquarters Tract and parking facilities within the Property; and

WHEREAS, the Board finds that the buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements to be funded under this Agreement for authorized Projects are necessary to promote or develop new or expanded business enterprises within the Property and create Primary Jobs; and

WHEREAS, on August ___, 2013, a notice describing the Projects was published in _____, the newspaper of general circulation in the City; and

WHEREAS, following the 60th day after publication of such notice, the FCDC intends to undertake the Projects; and

WHEREAS, on August 12, 2013, the Board approved this Agreement; and

WHEREAS, the Developer agrees and understands that the Act requires the City Council to approve all programs and expenditures of the FCDC and accordingly this Agreement is not effective until the City Council has approved it at a City Council meeting called and held for that purpose; and

WHEREAS, on October ___, 2013, the City Council held a meeting and adopted Resolution No. _____ approving and ratifying this Agreement.

NOW THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the FCDC, Developer and Blue Star Frisco agree as follows:

SECTION 1. <u>FINDINGS INCORPORATED</u>. The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration, and promises that bind the Parties.

SECTION 2. TERM. This Agreement shall be effective as of the Effective Date of this Agreement, and shall terminate on the 25th anniversary of the date of the issuance of a certificate of occupancy for the Headquarters Facility by the City.

SECTION 3. DEFINITIONS. The following words shall have the following meanings when used in this Agreement:

"Act" means Chapters 501 through 505, Texas Local Government Code, as amended.

"Agreement" means this Frisco Community Development Corporation Performance Agreement, together with all exhibits and schedules attached hereto from time to time.

"Board" means the Board of Directors of the FCDC.

"City Debt" means the debt to be issued by the City in an amount, in the aggregate, not to exceed $20,000,000.00, the proceeds of which shall be made available to Developer for the construction of the Parking Facilities within the Headquarters Tract and the Mixed Use Tract.

"City" means the City of Frisco, Texas, a Texas home-rule municipality.

"Debt Service Payment" means the regular amortized payments required to repay the City Debt.

"Default" is defined in Section 7.

"Developer" means Blue Star HQ, Inc., a Texas corporation, as well as all affiliates, successors, and assigns of Blue Star HQ, Inc.

"Effective Date" means August 12, 2013.

"FCDC" means the Frisco Community Development Corporation, a Type B corporation of the City organized under and operating pursuant to the Act.

"FCDC Sales Tax" means the one-half percent (0.5%) sales and use tax on taxable sales and services within the City that, pursuant to the procedure prescribed in the Act, the voters within the City authorized for levy and collection on behalf of the FCDC for its corporate purposes.

"FCDC Sales Tax Revenue" means the proceeds of the FCDC Sales Tax that are actually received by the FCDC or by the City on behalf of the FCDC from the State Comptroller, from the levy and collection of the FCDC Sales Tax from and after the Effective Date on or with respect to taxable sales and transactions that occur only within the Headquarters Tract and Mixed Use Tract.

"Force Majeure" means any unforeseeable causes beyond the control of either Party hereto, including, but not limited to, casualty, damage, strikes or lockouts, acts of God, war, terrorism, riots, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any governmental or regulatory body other than the City, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the Party seeking the extension or excuse from performance.

"Full-time Jobs" means an employee (not employee-equivalent) hired to work a minimum of One Thousand Nine Hundred Fifty (1,950) hours of work over a twelve (12) month term (thirty-seven and one-half hours per week) including allowance for vacation and sick leave, with full company benefits or a Dallas Cowboys Football player and employed on the Property, unless the employee's job function requires traveling.

"Headquarters Facility" means a Class A (non-tilt wall) office building, together with appurtenant infrastructure and parking to be constructed within the Headquarters Tract and continuously occupied (except for reasonable times for remodeling and subject to events of Force Majeure) as the world corporate headquarters of the Dallas Cowboys Football Club, Ltd., during the Term of the Agreement.

"Headquarters Tract" means approximately five (5) acres of land located within the Property that will be conveyed by the FCDC to Developer, the exact legal description of which shall be determined by a plat thereof approved by the City and recorded in the Map and Plat Records of Collin County, Texas, and appended to this Agreement prior to the obligation of the FCDC to convey the Headquarters Tract to Developer.

"Master Agreement" means the Master Development Agreement entered into by the City, Developer, Blue Star Frisco, L.P. and Blue Star Stadium, Inc. dated August 12, 2013, that provides for the development of improvements on the Property.

"Mixed Use Tract" means approximately 66 acres of land located within the Property to be purchased by Blue Star Frisco or others from the FCDC and developed in a manner that will promote new or expanded enterprises and create Primary Jobs, the exact legal description of which shall be determined by a plat thereof approved by the City and recorded in the Map Records of Collin County, Texas, and appended to this Agreement.

"Mixed Use Tract Option" means the option or right of Blue Star Frisco to acquire from the FCDC the Mixed Use Tract on the terms and conditions set forth in this Agreement.

"Parking Facilities" means one or more structured parking facilities within the Mixed Use Tract and the Headquarters Tract which are intended to be used to develop and promote new or expanded enterprises within the Mixed Use Tract and the Headquarters Tract that are financed by the Certificates of Obligation.

"Primary Job" means primary job, as defined by Section 501.002(12) of the Act.

"Projects" means the Headquarters Facility and the Parking Facilities.

"Property" means the property described by metes and bounds on ***Exhibit A***.

"Significant Contracts" means contracts for the construction of improvements which are valued at $5,000,000 or more.

"Stadium Facility" means the improvements constructed by the City on the Stadium Tract as described in the Master Agreement.

"Stadium Facility Lease" means the lease between the City and Blue Star Stadium for the use of the Stadium Facility by the Dallas Cowboys Football Club, Ltd., as the home training facility of the Dallas Cowboys.

"Stadium Tract" means approximately 20 acres of land located within the Property that will be conveyed by the FCDC to the City as provided in the Master Agreement.

"State Comptroller" means the Office of the Texas Comptroller of Public Accounts, or any successor agency.

SECTION 4. CONVEYANCE OF HEADQUARTERS TRACT.

(a) Developer shall be responsible for creating a site plan for the Headquarters Facility (the "Site Plan") and obtaining approval of the Site Plan by the City and the FEDC. Upon approval by the City and FEDC of the Site Plan, the FCDC shall cause a conveyance plat of the Property to be prepared, approved by the Developer and City and recorded in the Map and Plat Records of Collin County, Texas, that creates a specific lot and/or block for the Headquarters Tract based upon the information in the Site Plan.

(b) Upon approval of the plans and specifications for the Headquarters Facility by the City and the FEDC, the FCDC shall convey by special warranty deed (the "Deed") the Headquarters Tract to Developer.

(c) Developer shall commence construction of the Headquarters Facility within ____ days from the date of receipt of the Deed and shall complete of the Headquarters Facility no later than January 1, 2017, subject to force majeure delays and delays approved by the City.

SECTION 5. REIMBURSEMENT OF THE PARKING FACILITIES COSTS.

(a) Under the terms of the Master Agreement, the City has agreed to create a new tax increment reinvestment zone ("TIRZ #5") to encompass the Headquarters Tract and the Mixed Use Tract. The City has further agreed to sell up to Twenty Million Dollars ($20,000,000.00) in City Debt, repayable on a regular amortized basis over twenty five (25) years. The proceeds from the sale of the City Debt will be used by the City to construct the Parking Facilities. All revenues collected by TIRZ #5 (the "TIRZ #5 Revenue") will be used first to pay the debt service payments on the City Debt (each a "Debt Service Payment") as each Debt Service Payment comes due. The Developer will be responsible for remitting to the City within twenty (20) days after the date of payment by the City of each Debt Service Payment the difference between the Debt Service Payment amount and the amount of TIRZ #5 revenue available to be applied to the Debt Service Payment (the "Developer Payment"). It is anticipated that as the ad valorem tax values within TIRZ #5 increase, the TIRZ #5 Revenue available to pay each Debt Service Payment will increase and the Developer Payment obligation will decrease until at some point in the future the TIRZ #5 Revenue will be sufficient to cover each Debt Service Payment.

(b) In the event the City constructs the Parking Facilities and the Developer makes Developer Payments, the FCDC shall reimburse Developer an amount, computed as to each

Developer Payment, equal to the lesser of: (1) one-half of the FCDC Sales Tax Revenue (0.25% of sales and use taxes) collected on sales and other transactions within the Headquarters Tract and the Mixed Use Tract by the FCDC during the amortized period covered by such Developer Payment (such period of time being a "Debt Service Payment Period"), or (2) one-half of the Developer Payment (the "FCDC Sales Tax Reimbursement").

(c) The FCDC Sales Tax Reimbursement shall be paid by the FCDC to Developer within forty-five (45) days following receipt by the FCDC of the FCDC Sales Tax Revenue for the Debt Service Payment Period and an application for reimbursement from the Developer certifying the amount of the Developer Payment.

(d) Developer authorizes the FCDC or the City to request sales and use tax information from the State Comptroller pursuant to Section 321.3022 of the Texas Tax Code, as amended, and to obtain an "Area Report" from the State Comptroller that identifies sales and use tax information relating to the Headquarters Tract and the Mixed Use Tract. The Developer agrees upon request to assist the FCDC and the City in obtaining sufficient taxpayer information to request such reports. The FCDC hereby agrees to keep this information confidential consistent with Section 321.3022(f) of the Texas Tax Code. The FCDC reserves the right to conduct audits of the sales and use tax records of businesses located in the Headquarters Tract and the Mixed Use Tract to the extent the sales tax information is not available or discernible from an "Area Report".

SECTION 6. LICENSE TO USE MIXED USE TRACT FOR ELECTRONIC SIGNS.

(a) Developer is granted a license to construct and operate up to two (2) electric marquee signs (the "Signs") along the eastern border of the Mixed Use Tract at locations to be mutually agreed upon by the Developer, the FCDC and the City.

(b) Developer shall bear all costs of constructing, maintaining and operating the Signs.

(c) In consideration for the grant of this license, Developer shall provide the City, at no cost, with four (4) eight second spots out of each 88 second loop of advertising space (or equivalent) for events at City-owned venues.

SECTION 7. OPTION TO ACQUIRE THE MIXED USE TRACT.

(a) Blue Star Frisco, L.P. is granted a conditional option to purchase the Mixed Use Tract on or before September 1, 2017, for the consideration and at the price set forth in the Purchase Option Agreement attached hereto as Exhibit B, the terms of which are incorporated herein.

(b) The closing of the Mixed Use Tract must occur prior to September 1, 2017, and the purchase price paid therefor shall be in all cash.

(c) The FCDC will provide a current survey and Blue Star Frisco will be responsible for any owner's policy of title insurance and the payment of all rollback taxes. The Mixed Use Tract shall be subject to all existing Dallas North Tollway right-of-way agreements.

SECTION 8. OBLIGATIONS OF THE DEVELOPER.

(a) Developer shall use commercially reasonable efforts to have the Headquarters Facility completed and a certificate of occupancy received from the City no later than January 1, 2017, subject to Force Majeure delays and delays approved by the City and FCDC.

(b) At least $25,000,000.00 in Headquarters Facility Costs shall be expended to construct the Headquarters Facility.

(c) The Headquarters Facility shall be occupied by the Dallas Cowboys Football Club, Ltd., as its world corporate headquarters, and occupied as the corporate office of the Dallas Cowboys Cheerleaders throughout the Term of this Agreement.

(d) On January 1 of the first calendar year after the Headquarters Facility is completed and throughout the Term of the Agreement, employment for a minimum of 150 Full-Time Jobs shall be provided on the Property by the Developer and the Dallas Cowboys Football Club, Ltd., or their affiliates.

(e) Developer, the Dallas Cowboys Football Club, Ltd., and the Dallas Cowboys Cheerleaders shall recognize the City as the home training facility and world corporate headquarters of the Dallas Cowboys and Dallas Cowboys Cheerleaders in all reference and promotional materials, videos, films and interviews and will cooperate with the FCDC and City in licensing the FCDC and/or City to utilize logos, drawings, pictures and other materials in print and media presentations developed by or for the FCDC and/or City.

(f) Developer shall cause its general contractor and subcontractors involved in the construction of the Headquarters Facility and the Parking Facilities, and shall contractually require any builder or developer within the Mixed Use Tract involved in a Significant Contract, to use separated building materials and labor contracts in a manner that allows the situs of any sales taxes paid on the building materials for those projects to be in the City and conforms to the reporting procedures set forth herein. For each Significant Contract, the contractor shall maintain a current summary of separated costs in each of the three categories: taxable materials, tax, nontaxable categories (including overhead & profit) and shall submit a total value for each of these categories upon request by the FEDC. For the Headquarters Facility Project and the Parking Facilities Project, Developer shall include the summary of separated costs with the Application for Reimbursement.

(g) The Developer will certify and provide, to the extent necessary, Developer records, documents, agreements, construction contracts both at the prime and sub-contractor level, and other instruments in furtherance of the following purposes: (i) to insure Developer's compliance with the affirmative covenants as set forth within the Performance Agreement; (ii) to determine the existence of an event of default; (iii) to insure compliance with any terms or conditions set forth in the Agreement or related documents. Developer will provide reports certifying the status of compliance and any other relevant information until the termination of the Agreement.

(h) Although not an event of default or condition of any reimbursement hereunder, the Developer agrees to endeavor to actively participate in community and charitable organizations

and/or activities, the purpose of which are to improve the quality of life in the City of Frisco, Texas, and to actively encourage its employees to be involved in such organizations and/or activities.

(i) Although not an event of default or condition of any reimbursement hereunder, the FCDC requests that Developer, and its affiliates, endeavor to satisfy its need for all additional employees from Frisco residents and purchase all materials, supplies and services necessary to effect the occupancy of the Headquarters Facility from Frisco merchants and businesses. The FCDC also requests that Developer use reasonable efforts to place Developer-managed hotel room nights related to Developer's business at hotel facilities located in the City whenever practicable.

(j) The Developer shall perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between the Developer and the FCDC and shall perform and comply with all terms, conditions, and provisions of the Master Agreement.

(k) The Developer covenants and agrees that this Agreement does not violate Section 501.161 of the Texas Local Government Code, as amended.

SECTION 9. DEFAULT REMEDIES.

(a) If any Party fails to perform any material covenant required by this Agreement, the other Party may give written notice of such failure to the non-performing Party, which notice shall describe in reasonable detail the nature of the failed performance. If the non-performing Party does not cure or remedy the failed performance within a reasonable period of time after the notice is given (taking into consideration the nature of the failed performance, but in no event more than ninety (90) days after the notice is given), then the non-performing Party shall be in "Default" under this Agreement.

(b) In addition to the Defaults described in Section 9(a), the Developer is in default if it becomes delinquent in the payment of any ad valorem taxes or sales taxes owed to the City and such delinquencies, including penalties and interest, are not paid in full within sixty (60) days after written notice of such delinquencies is given. If the Developer is in Default under this Section 9(b), the FCDC may pursue any remedies available at law or in equity (excluding termination of this Agreement) including, but not limited to, exercise of the right of off-set against any amounts to which the Developer is entitled under this Agreement.

(c) If the Developer is in Default with respect to Sections 9(a) or 9(b), the FCDC may terminate any future incentive payments due Developer under this Agreement.

(d) If Blue Star Frisco exercises the Mixed Use Tract Option and subsequently becomes in Default, Blue Star shall pay to the FCDC, as its exclusive remedy, a liquidated **sum of $5,000,000.00**.

(e) If the FCDC is in Default, the Developer may enforce specific performance of this Agreement.

SECTION 10. REPRESENTATIONS OF THE FCDC.

(a) The FCDC is duly authorized, created, and existing in good standing under the laws of the State of Texas and is qualified and authorized to implement and conduct the functions and actions contemplated by this Agreement.

(b) The FCDC has the power, authority, and legal right to enter into and perform its obligations under this Agreement; and the execution, delivery, and performance of those obligations has been duly authorized; will not, to the best of the FCDC's knowledge, violate any applicable judgment, order, law, or regulation; and does not constitute a default under, or result in the creation of, any lien, charge, encumbrance, or security interest upon any of the FCDC's assets under any agreement or instrument to which the FCDC is a party, or by which the FCDC or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed and delivered by the FCDC and constitutes a legal, valid, and binding obligation of the FCDC enforceable in accordance with its terms.

(d) The execution, delivery, and performance of this Agreement by the FCDC do not require the consent or approval of any person or entity that has not already been obtained.

SECTION 11. REPRESENTATIONS OF THE DEVELOPER.

(a) Blue Star Frisco, L.P., is a Texas limited partnership duly authorized, created, and existing in good standing under the laws of the State of Texas.

(b) Blue Star Frisco has the power, authority, and legal right to enter into and perform its obligations under this Agreement, and the execution, delivery, and performance of those obligations has been duly authorized; will not, to the best of Blue Star Frisco's knowledge, violate any applicable judgment, order, law, or regulation applicable to Blue Star Frisco; and does not constitute a default under, or result in the creation of, any lien, charge, encumbrance, or security interest upon any assets of Blue Star Frisco under any agreement or instrument to which Blue Star Frisco is a party, or by which Blue Star Frisco or its assets may be bound or affected.

(c) This Agreement has been duly authorized, executed, and delivered by Blue Star Frisco and constitutes a legal, valid, and binding obligation of Blue Star Frisco enforceable in accordance with its terms.

(d) The execution, delivery, and performance of this Agreement by Blue Star Frisco does not require the consent or approval of any person or entity that has not already been obtained.

SECTION 12. ADDITIONAL PROVISIONS.

(a) This Agreement and the Master Agreement constitute the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. Except as provided in this Section 12(a), no alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment. No course of dealing on the part of any Party or failure or delay by any Party with

respect to the exercise of any right, power, or privilege under this Agreement shall operate as a waiver thereof.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Collin County, Texas.

(c) Blue Star Frisco has the right to assign this Agreement in whole, including all obligations, rights, title, and interests of the Developer under this Agreement, and to assign this Agreement in part, with respect to any obligations of the Developer under this Agreement, to any affiliate (i.e., an entity that controls, is controlled by, or is under common control with the Developer) without the consent of FCDC and to any other entity only with the consent of the FCDC, which consent may be withheld in its sole discretion.

(d) This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto or to any assignment hereof.

(e) Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

(f) This Agreement is a contract made under, and shall be construed in accordance with and governed by, the laws of the United States of America and the State of Texas.

(g) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(h) If the performance by any Party of its obligations under this Agreement is delayed due to unexpected circumstances beyond the reasonable control of such Party, then such Party shall be excused from performance during the period that such circumstances continue so long as such Party is diligently and continuously seeking to eliminate the circumstances or otherwise resume performance in spite of such circumstances.

(i) Any notice or other communication required or permitted by this Agreement (a "Notice") is effective when in writing (i) and personally delivered by any nationally recognized delivery service such as FedEx or UPS, or (ii) three (3) days after the Notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows or, in the case of a change of address, as provided in a Notice notifying the other Party of such address change:

To the Developer:

Blue Star HQ, Inc. and/or
Blue Star Frisco, L.P.
One Cowboys Parkway
Irving, Texas 75063
Attention: Stephen Jones

With a copy to:

Blue Star HQ, Inc. and/or
Blue Star Frisco, L.P.
8000 Warren Parkway #100
Frisco, Texas 75034
Attention: Joe Hickman

and

Blue Star HQ, Inc.
One Cowboys Parkway
Irving, Texas 75063
Attention: General Counsel

and

Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attention: Denis Braham and Barry Knight

To the FCDC:

Frisco Community Development Corporation
Attn: George Purefoy
City Manager
6101 Frisco Square Blvd., Fifth Floor
Frisco, TX 75034

With a Copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.
Attn: Robert H. Roeder and Randy Hullett
1700 Redbud Blvd., Suite 300
McKinney, TX 75069

(j) If a court finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render the provision invalid or unenforceable as to any other persons or circumstances. To the extent feasible, any provision found to be invalid or unenforceable shall be deemed to be modified to be valid and enforceable; however, if the provision cannot be so modified, it shall be stricken from this Agreement, and all other provisions of this Agreement shall remain valid and enforceable and unaffected by the stricken provision.

(k) Where the context permits, words used in this Agreement in the singular also include the plural and vice versa, and the definitions of such words in the singular also apply to such words when used in the plural and vice versa.

(l) Time is of the essence in the performance of this Agreement.

(m) The Board shall authorize the Board's President to execute this Agreement on behalf of the FCDC.

(n) The FCDC is not required by State law to comply with the competitive bidding requirements applicable to the City.

(o) The Developer and Blue Star Frisco each certifies that it does not and will not knowingly employ an undocumented worker (in accordance with Chapter 2264 of the Texas Government Code, as amended) in connection with the performance of any of its respective obligations under this Agreement. If during the Term of this Agreement, the Developer or Blue Star Frisco is convicted of a violation under 8 U.S.C. § 1324a(f), the Developer or Blue Star Frisco shall repay the amount of the public subsidy provided under this Agreement as required by law. Pursuant to Section 2264.101, Texas Government Code, a business is not liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

(p) The following exhibits are attached hereto and incorporated herein for all purposes:

Exhibit A – Metes and Bounds Description of the Property
Exhibit B – Purchase Option Agreement

DEVELOPER:

BLUE STAR HQ, INC.,
a Texas corporation

By: _____
Name: _____
Title: _____

BLUE STAR FRISCO, L.P.,
a Texas limited partnership

By: Blue Star Investments, Inc.,
a Texas corporation
its General Partner

By: _____
Name: _____
Title: _____

FCDC:

Frisco Community Development Corporation, a Texas non-profit corporation

By: _____
Gary Carley, Chairman

ATTEST:

_____
Secretary

EXHIBIT A

(Metes and Bounds Description of the Property)

Being a tract of land located in the Collin County School Land Survey #6, Abstract No. 149, being all of a tract of land described in deed to Frisco Warren Parkway 91, Inc., Volume 5012, Page 3715, Deed Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at a 5/8" iron rod found with cap stamped "KHA", being the Southeast corner of Lot 1, Block A, North Tollway Center, recorded by Plat in Cabinet 2007, Page 95, per the Plat Records, Collin County, Texas (P.R.C.C.T.), and being in the West right-of-way line of Dallas North Tollway (variable width public R.O.W.);

Thence along the West right-of-way line of said Dallas North Tollway, and the East line of said Frisco tract as follows:

S 00 degrees 11 minutes 20 seconds E, 1008.38 feet to a 1/2" iron rod set with cap stamped "Wier & Assoc Inc", being the beginning of a curve to the left;

Along with said curve to the left having a radius of 3014.79 feet, a delta angle of 14 degrees 41 minutes 17 seconds, a chord bearing of S 07 degrees 31 minutes 59 seconds E, 770.74 feet, and an arc length of 772.86 feet to a 1/2" iron rod set with cap stamped "Wier & Assoc Inc", being the Southeast corner of said Frisco tract and being in the North right-of-way line of Warren Parkway (variable width public R.O.W.);

Thence along the North right-of-way line of said Warren Parkway and the South line of said Frisco tract as follows:

S 89 degrees 56 minutes 34 seconds W, 1506.57 feet to a 1/2" iron rod set with cap stamped "Wier & Assoc Inc";

S 89 degrees 37 minutes 22 seconds W, 800.23 feet to a 1/2" iron rod set with cap stamped "Wier & Assoc Inc", being the Southwest corner of said Frisco tract;

Thence N 00 degrees 16 minutes 47 seconds W, along the West line of said Frisco tract, 1820.94 feet to a 1/2" iron rod found;

Thence S 88 degrees 55 minutes 13 seconds E, along the North line of said Frisco tract, passing a 5/8" iron rod found with cap stamped "KHA" at 1162.91 feet being in the West right-of-way line of Gaylord Parkway per plat recorded in Cabinet 2007, Page 95, P.R.C.C.T., passing a 5/8" iron rod found at 1287.09 feet being in the East right-of-way line of said Gaylord Parkway and being the Southwest corner of said Lot 1, Block A, and continuing in all a total distance of 2211.70 feet to the place of beginning and containing 91.645 acres (3,992,065 square feet) of land.

EXHIBIT B

PURCHASE OPTION AGREEMENT

This PURCHASE OPTION AGREEMENT ("Agreement") is made and entered into effective as of the Effective Date by and between the FRISCO COMMUNITY DEVELOPMENT CORPORATION ("Optionor"), and BLUE STAR FRISCO, L.P., a Texas limited partnership ("Optionee").

ARTICLE I

DEFINITIONS

1.1 Definitions. As used herein, the following terms shall have the following meanings:

Applicable Law. All laws, statutes, ordinances, regulations, guidelines or requirements now in force or hereinafter enacted by an applicable Governmental Authority relating to or affecting the Land.

Closing: The exchange of documents and funds to consummate the transaction(s) triggered by the delivery of an Exercise Notice.

Closing Date: The date upon which a Closing occurs, which shall be the date described in Section 3.6 below, or on such earlier date as may be mutually agreed to by the Optionor and Optionee; provided, however, in no event shall the Closing Date be later than the Option Termination Date.

Code: The Internal Revenue Code of 1986, as heretofore or hereafter amended, and the regulations from time to time promulgated thereunder.

Deed: A special warranty deed, in the form of Exhibit "B" attached hereto and incorporated herein by reference for all purposes, conveying good and indefeasible title in the Land to Optionee, subject to no exceptions other than the Permitted Exceptions.

Effective Date: The date the last of Optionor and Optionee executes this Agreement.

Environmental Laws: Any local, state or federal ordinance, law, rule or regulation, pertaining to environmental regulation, contamination, cleanup or disclosure, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as now or hereafter amended, "CERCLA"), 42 U.S.C. § 9601 et seq., the Resource, Conservation and Recovery Act (as now or hereafter amended, "RCRA"), 42 U.S.C. § 6901 et seq., Superfund Amendments and Reauthorization Act of 1986 (as now or hereafter amended, "SARA"), Pub. L. 99-499 100 Stat. 1613, the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the

Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 1101 et seq., and all amendments of the foregoing, or any state superlien or environmental clean-up or disclosure statutes.

Exercise: An election by Optionee to exercise the Option with respect to the Land, which Exercise shall be evidenced by delivery from Optionee to Optionor of the Exercise Notice.

Exercise Notice: The notice delivered by Optionee to Optionor pursuant to Section 3.1(b) of this Agreement, notifying Optionor of Optionee's Exercise of the Option.

FIRPTA Certificate: A certificate, in form reasonably acceptable to Optionee, certifying that Optionor is not a "foreign person", as such term is defined in Section 1445 of the Code, and that the sale of the Land is not subject to the federal income tax withholding requirements of such section of the Code.

Hazardous Materials. Any substance, material, or waste which is now or hereafter classified or considered to be hazardous, toxic, or dangerous under any law applicable to the Land, including any Environmental Law, relating to pollution or the protection or regulation of human health, natural resources or the environment, together with asbestos, polychlorinated biphenyls, petroleum products and raw materials which include hazardous constituents.

Land: The tracts of land described on Exhibit "A" attached hereto, together with all easements, interests, rights, benefits and privileges, if any, benefitting the Land (collectively, the "Easements"), and all the rights and appurtenances pertaining to the foregoing Land and Easements, including any right, title and interest of Optionor, but only in its capacity as the owner of fee simple title and/or other rights of possession to the Land, in and to adjacent streets, roads, alleys or rights-of-way, together with all rights of ingress and egress onto the Land and strips or gores, if any, between the Land and abutting properties, and together with any and all oil, gas and minerals lying under, in, on or about, or constituting a part of, the Land (regardless of whether or not such minerals are considered a part of the surface estate or a part of the mineral estate).

Master Development Agreement: The Master Development Agreement dated as of the Effective Date by and between the City of Frisco and Blue Star Stadium, Inc., Blue Star HQ, Inc., and Blue Star Frisco, L.P.

Memorandum of Option: A memorandum of option, in the form of Exhibit "C" attached hereto and incorporated herein by reference for all purposes, which shall be executed by Optionor and Optionee in accordance with the terms of this Agreement and may be filed of record, at Optionee's cost, in the appropriate real property records of the County in which the Land is located.

Note: Shall have the meaning set forth in Section 2.1 hereof.

Option: The Option to purchase the Land granted to Optionee by Optionor pursuant to the terms of this Agreement.

Optionee: The party described as Optionee in the initial paragraph of this Agreement, and its successors and assigns.

Optionor: The party described as Optionor in the initial paragraph of this Agreement.

Option Period: The period of time from the Effective Date through and including the Option Termination Date.

Option Termination Date: September 1, 2017.

Permitted Encumbrances: Shall have the meaning set forth in Section 3.4 hereof.

Plat: A conveyance plat of the Land prepared by Optionee and approved by the City of Frisco pursuant to the applicable City subdivision ordinances.

Purchase Price: The purchase price to be paid by Optionee to Optionor for the Land, which shall be in the amount set forth in Section 3.1(a) hereof.

Survey: A current land title survey of the Land, to be obtained pursuant to Section 3.2 hereof.

Title Commitment: A current commitment for the issuance to Optionee of the Title Policy from the Title Company.

Title Company: The title insurance company, if any, which issues the Title Policy, which Title Company shall be selected by Optionee.

Title Policy: An Owner's Policy of Title Insurance in the standard form promulgated for use in the State of Texas, to be issued by the Title Company.

1.2 Additional Definitions. As used herein, the following terms shall have the following meanings:

"Hereof," "hereby," "hereto," "hereunder," "herewith," and similar terms mean of, by, to under and with respect to, this Agreement.

"Heretofore" means before, "hereafter" means after, and "herewith" means concurrently with, the date of this Agreement.

All pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require.

All terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

ARTICLE II

GRANT OF OPTION

2.1 Grant of Option. For One Hundred and no/100 Dollars ($100.00) in hand paid and the tender by Optionee within ten (10) days of written notice from Optionor of amounts equal to the interest payments that accrue after the Effective Date that are due under that certain note in the original principal sum of $15,000,000.00 held by North Dallas Bank (the "Note") which is secured by the Property (each an "Option Payment") within ten (10) days from written notice from Optionor, and other good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and subject to the terms, provisions and conditions hereinafter set forth, Optionor hereby grants to Optionee the Option to purchase the Land. Except as expressly provided herein, the Option is irrevocable for the Option Period.

ARTICLE III

TERMS OF OPTION

3.1 Purchase Option Price and Option Period.

(a) Purchase Price. If the Option is exercised, the purchase price ("Purchase Price") for the Land shall be an amount equal to (i) Fifteen Million and No/100ths Dollars ($15,000,000.00), plus (ii) the cumulative amount of the interest that accrues after the Effective Date paid by Optionor on the Note obligation incurred by Optionor that was used to finance Optionor's acquisition of the Property, (iii) less the Option Payments made under Section 2.1 above.

(b) Purchase Option Period and Preconditions to Exercise. Optionee may exercise the Option during the Option Period by delivering written notice of such election (the "Exercise Notice") to Optionor at least sixty (60) days before the Closing.

(c) Payment of Purchase Price. The Purchase price shall be paid to Optionor by Optionee in cash or other immediately available funds at Closing.

3.2 Survey. Within twenty (20) days after the approval by the City of the Plat, Optionor, at Optionor's sole cost and expense, must deliver or cause to be delivered to Optionee and Optionor a Survey (including the field notes prepared by the Surveyor). The Survey must be dated subsequent to the Effective Date and must be sufficient to permit the Title Company to modify the standard printed exception in the Title Policy pertaining to discrepancies, conflicts, shortages in area or boundary lines, encroachments, overlapping of improvements or similar matters (the "Survey Exception"). The Survey must contain a Surveyor's certification in a form acceptable to Optionee and Optionor. Without limiting the foregoing, the Survey must indicate (i) the location of improvements, if any, all existing and proposed roadways traversing, adjoining

or bounding the Land, all building and setback lines, all ponds, creeks, rivers, canals, ditches, and streams, and all easements, rights-of-way, and encroachments, (ii) the number of gross square feet and "net square feet" (as defined above) of area within the Land, (iii) all topographical information customarily reflected by a topographical survey, (iv) the location and size of all gas, electric, water, sewer and telephone utilities now or in the future servicing the Land, including information regarding such utilities' proximity to the Land, if such utilities are not currently located on the Land, (v) the perimeter boundaries of the Land, and (vi) that the corners of the Land have been monumented properly. All recorded matters shown on the Survey must be legibly identified by appropriate volume and page recording references. After review and modification in accordance with Section 3.4 hereof, the legal description contained in the Survey will be substituted for Exhibit "A" of this Agreement. Within fifteen (15) days after the receipt of the last of the Survey, the Title Commitment, and true and accurate copies of all attendant documents thereto, Optionee shall have the right to disapprove of such Survey in form or substance.

3.3 Title Commitment. Within 10 days after the delivery of the Survey, Optionee, at Optionee's sole cost and expense, must cause the Title Company to furnish to Optionee and Optionor the Title Commitment, together with good legible copies of all documents constituting exceptions to Optionor's title as reflected in the Title Commitment. The Title Commitment must be dated subsequent to the Effective Date and show the status of title to the Land and all exceptions, including liens, easements, restrictions, rights-of-way, covenants, reservations, and other conditions, if any, affecting such real property, together with accurate copies of all such exception documents, and commit to issue at the Closing a Title Policy to Optionee in the amount requested by Optionee.

3.4 Review Period. Optionee will have a period beginning on the approval of the Plat and ending sixty (60) days from receipt by Optionee of the last of the Survey, the Title Commitment and the documents referred to therein as conditions or exceptions to title to the Land (the "Title Review Period") in which to review such items and to deliver to Optionor in writing such objections as Optionee may have to anything contained or set forth in the Title Commitment or the Survey. As to items to which Optionee makes objection, Optionor agrees to use reasonable efforts to effectuate the cure of such objections, but at no additional expense to Optionor. If Optionor is unable despite its reasonable efforts to cure any of Optionee's objections at least thirty (30) days prior to Closing, Optionee will have the right to either (i) terminate this Agreement, in which event neither Optionor nor Optionee will have any further obligations hereunder (except for surviving obligations), or (ii) waive such title matters and proceed to Closing, in which case the waived title matters will be considered Permitted Exceptions. If any title matters arise after the expiration of the Title Review Period but prior to the scheduled Closing Date, then Optionee will have the right to make objections to such items and the process described in this Section 3.4 will be repeated (but the Closing Date will not be extended accordingly). It is agreed that if Optionee does not elect to revoke its exercise of the Option pursuant to Section 3.10 below following the process described in this Section 3.4, and the Closing of the sale of the Land occurs with respect to the Exercise, then the Permitted Encumbrances set forth in the Deed delivered at Closing shall in any event include any and all matters then of record in the applicable real property records of Collin County, Texas which

affect such Land other than liens or encumbrances granted or created by the sole act or deed of the Optionor without the approval or participation of Optionee (or affiliates of Optionee).

3.5 No Representations and Warranties by Optionor. The sale of the Land by Optionor to Optionee hereunder shall be made without representations or warranty of any kind, either express or implied, as to the condition of the Land, its merchantability, its condition or fitness for intended use or for any particular purpose, and all the Land conveyed to Optionee pursuant to this Agreement, if closed, shall be transferred, sold and conveyed on an "**AS-IS, WHERE-IS**" basis with all faults. Optionee shall rely on its own due diligence and knowledge of the Land in making its decision to exercise the Option and consummating its acquisition of the Land. Nothing to the contrary set forth in this Section 3.5, however, shall void or negate any representations or warranties as set forth in Article V hereof or any warranties of title of title by Optionor as set forth in the Deed. Within twenty (20) days after Optionee's delivery of an Exercise Notice, Optionor shall deliver a written instrument specifying to Optionee whether Optionor has received any written notice of any condemnation proceedings affecting the Land, and if Optionor has received any such notice(s) then such instrument shall be accompanied by a true and correct copy of any such notice(s). During the Option Period, Optionor shall not grant any easements or other encumbrances on the Land that run with the Land and would survive Closing without Optionee's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

3.6 Closing Date. The closing of the sale of the Land by Optionor to Optionee (the "Closing") shall be at the offices of the Title Company on or before the Option Termination Date (the "Closing Date").

3.7 Optionee's Obligation at Closing. At the Closing, Optionee shall deliver to Optionor a cashier's check payable to Optionee's order, or wire transfer or otherwise deliver readily available funds to Optionor, in the amount of (i) the cash Purchase Price, subject to all credits provided in Article III hereof, and (ii) such documents or information as Optionor or the title company may reasonably require in order to consummate the purchase and sale transaction contemplated by this Article III.

3.8 Optionor's Obligation at Closing. At Closing, Optionor shall deliver or cause to be delivered to Optionee, the following:

(a) The Deed, fully executed and acknowledged by Optionor, conveying to Optionee the Land, subject only to the Permitted Encumbrances.

(b) A pro forma Title Policy, in a form and content reasonably satisfactory to Optionee and Optionor, at Optionee's expense.

(c) Evidence satisfactory to Optionee and the Title Company that Optionor and its representatives have the authority to convey, assign and transfer the Land, together with evidence satisfactory to Optionee and the Title Company that Optionor has paid the Note, or is causing the Note to be paid at Closing, and the release of any lien related thereto.

(d) Exclusive possession of all the Land, subject only to the Permitted Encumbrances.

(e) Such other documents or information as Optionee or the title company may reasonably require in order to consummate the transactions contemplated hereby.

3.9 Closing Costs. Except as may be otherwise provided in this Article III, all reasonable and customary closing costs shall be paid by Optionee, provided that each party shall pay its own internal administrative and legal expenses.

3.10 Revocation by Optionee. Optionee shall have a general right to revoke its exercise of the Option pursuant to this Article III at any time prior to the Closing, without cause, by giving written notice of revocation to Optionor.

3.11 Partial Exercise by Optionee. Without the prior written consent of Optionor, which consent shall be within the sole discretion of Optionor, Optionee shall not be permitted to exercise the Option on only a portion of the Land.

ARTICLE IV

SUBMISSION ITEMS AND INSPECTION

4.1 Submission Items. Within 10 days after the Effective Date, Optionor must furnish to Optionee, at Optionor's sole cost and expense, the following (collectively, the "Submission Items"):

(a) Contracts. A list of any and all contracts, maintenance arrangements, bonds, or other similar agreements affecting the Land, together with copies of such documents.

(b) Tax Statements. Copies of the tax statements, if any, for the Land covering the 3 calendar years preceding the Effective Date, certified by Optionor to be true, correct and complete.

(c) Plans and Specifications. A copy of any plans and specifications for the Land, if any, together with a copy of all other plats and other drawings by surveyors, engineers and other consultants related to the Land.

(e) Reports and Studies. Copies of all soil reports and engineering reports in Optionor's possession, and copies of any reports or studies (including, without limitation, environmental and physical inspection reports of employees, principals, consultants, governmental authorities or insurance carriers) in Optionor's possession or control in respect of the physical condition or ownership of the Land.

(e) Environmental Reports. Copies of any and all engineering reports, inspection reports, notices and other materials regarding or evidencing the presence (or lack of presence) of any Hazardous Substances at or near the Land.

4.2 Review. During the Option Period, Optionee may review the Submission Items and make any physical inspections and conduct any and all investigations of the Land as may be desired by Optionee. During the Option Period and through the Closing, Optionee and its agents and contractors may enter upon the Land at all reasonable times to conduct such inspections and audits. As part of Optionee's inspections, Optionee may cause such engineering and environmental inspections or studies to be conducted at the Land as Optionee may desire, including, without limitation, inspections or studies which may require the drilling of holes and the removal of small soil and similar samples. Optionor agrees to make available to Optionee and its authorized agents or representatives all applicable books and records relating to the Land and the ownership and maintenance thereof.

4.3 Termination. If Optionee notifies Optionor in writing on or before the expiration of the Option Period that Optionee, for any reason whatsoever, does not desire to purchase the Land pursuant to this Agreement, then this Agreement will automatically terminate.

4.4 Indemnity. Optionee agrees to indemnify and hold Optionor harmless from and against any actual loss, damage, injury, claim or cause of action Optionor may suffer or incur as a direct result of Optionee's inspections of the Land undertaken pursuant to this Agreement.

ARTICLE V

REPRESENTATIONS

5.1 Optionor Representations. Optionor makes the following representations, as of the Effective Date and as of the Closing Date:

(a) Organization and Authority. Optionor is a development corporation duly organized and validly existing under the laws of the State of Texas. The execution and delivery of this Agreement by the officer(s) executing this Agreement on behalf of Optionor and the performance of this Agreement by Optionor have been duly authorized by Optionor, and this Agreement is binding on Optionor and enforceable against Optionor in accordance with its terms. No consent to, and no waiver of any restriction against, any such execution, delivery and performance is required from any creditor, judicial or administrative body, governmental authority, or other party other than any such consent or waiver which already has been unconditionally given. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Optionor or the Land is subject.

(b) No Prohibitions. Neither Optionor nor any employee executing this Agreement on behalf of Optionor is prohibited from (i) executing or delivering this Agreement, (ii) complying with the terms of this Agreement, or (iii) consummating the transactions contemplated by this Agreement by any applicable governmental requirement, agreement, instrument, restriction, or by a judgment, order or decree of any governmental authority, having jurisdiction over Optionor or the Land.

(c) Title. Optionor has good, indefeasible, and marketable title to the Land, subject only to the matters of record in the real property records of Collin County, Texas.

(d) Parties in Possession. There are no parties in possession of (or with a right to occupy) any portion of the Land.

(e) No Encumbrances. The Land is free and clear of all mechanic's liens, liens, mortgages, or encumbrances of any nature except those which are to be satisfied on or before Closing. No work has been performed or is in progress by, and no materials have been furnished to the Land or any portion thereof, which might give rise to any mechanic's, materialman's or other lien against the Land or the Improvements, or any portion thereof. At Closing, there will be no unpaid bills or claims in connection with any repair of the Improvements or work on the Land.

(f) No Proceedings. There is no suit, action, legal or other proceeding pending (or, to Optionor's best knowledge, threatened) which affects the Land.

(g) Compliance With Laws. To the best of Optionor's current actual knowledge, neither the Land nor Optionor is currently subject to (i) any existing, pending or threatened investigation or inquiry by any governmental authority or (ii) any remedial obligations under any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction or zoning ordinance or classification affecting the Land, including, without limitation, all applicable building codes, fire codes, health codes, water codes, flood disaster laws and health and Environmental Laws and regulations (hereinafter sometimes collectively called the "Applicable Laws"). Optionor has received no notice from any municipal, state, federal or other governmental authority of any violation of any Applicable Laws issued in respect of the Land which has not been heretofore corrected, and no such violation exists.

(h) Zoning. Except as disclosed to Optionee in writing, there are no pending or threatened requests, applications or proceedings to alter or restrict the zoning or other use restrictions applicable to the Land. To the best of Optionor's knowledge, there is no judicial or administrative action or any action by adjacent landowners which would adversely affect, prevent, or limit the use of the Land for Optionee's intended purpose.

(i) Condemnation. Optionor has not received any notice of any condemnation or similar proceedings having been instituted or threatened against the Land or any part thereof, nor is any such proceeding threatened or contemplated to Optionor's knowledge.

(h) Submission Items. All items delivered or to be delivered by Optionor pursuant to this Agreement, including, without limitation, the Submission Items, are and will be true, correct and complete in all respects and do or will fairly present the information set forth in a manner that is not misleading. No such item omits to state information necessary to make the information contained therein not misleading.

(k) Hazardous Substances. Optionor has never generated, stored or disposed of any Hazardous Substances at the Land.

5.2 Optionee Representation. Optionee represents, as of the Effective Date and as of the Closing Date, that Optionee is duly organized and validly existing under the laws of the state of its organization and has all requisite power and authority to enter into and perform this Agreement and the documents contemplated hereby. Each person executing this Agreement on behalf of Optionee warrants and represents that such person has all requisite authority to do so.

ARTICLE VI

COVENANTS

6.1 Optionor's Covenants. In addition to Optionor's other agreements and undertakings hereunder, Optionor hereby covenants and agrees with Optionee that, from and after the Effective Date:

(a) No Third-Party Interests; No Further Encumbrances. Optionor will not grant to or create in any third party, nor permit any third party to acquire, any interest in the Land or any part thereof, and Optionor will not, nor will Optionor permit any third party to, further encumber the Land other than to refinance the existing indebtedness on the Land (subject to Optionee's approval, such approval not to be unreasonably withheld) without the prior written approval of Optionee.

(b) No Further Contracts. Optionor will not enter into any maintenance, management or other service contracts affecting the Land without the prior written approval of Optionee.

(c) Assessments. Optionor promptly will notify Optionee in writing of the levy (or threatened levy) of any special governmental assessment or similar occurrence and will pay any such assessment levied prior to Closing.

(d) Notice of Violation of Applicable Laws. Optionor promptly will notify Optionee in writing of any violation, alleged violation or anticipated violation, of any Applicable Laws of which it gains knowledge or is notified, and will cure any such violation of which it gains knowledge or is notified prior to Closing.

(e) Maintenance. Optionor agrees to continue to own, maintain and manage the Land in the same manner that Optionor has heretofore owned, maintained and managed the Land.

(f) Access; Utilities. Optionor agrees to grant to Optionee such easements for access and utilities as may reasonably be required by Optionee in connection with the development of the Land.

(g) Land Use. Optionor will not, without Optionee's prior written consent, (i) execute or otherwise agree to any deed restrictions, restrictive covenants or other

documents affecting the use of all or any portion of the Land, (ii) establish or consent to the establishment of any special association, community association, property owners' association, architectural control committee or any other such committee having jurisdiction over all or any portion of the Land, (iii) enter into any agreement affecting access to the Land, (iv) consent to any change of zoning for the Land, or (v) consent to any special assessment affecting the Land. Optionor promptly will provide to Optionee such information regarding any proposals or plans relating to the items described in clauses (i) through (v) as Optionee may reasonably request.

(h) Construction. Optionor will not, without Optionee's prior written consent, permit any excavation or construction of any kind on the Land.

(i) Updates. If at any time after the Effective Date any representation made by Optionor in Section 5 becomes untrue or misleading, then Optionor promptly must notify Optionee of such fact. At the Closing, Optionor must provide to Optionee a closing certificate ("Optionor Closing Certificate") pursuant to which Optionor certifies, represents and warrants to Optionee, as of the date of Closing, that (i) all of the covenants contained in this Section 6 have been fully satisfied, and (ii) all of the representations in Section 5 of this Agreement are and continue to be true and correct on the date of Closing (or, if not true, then Optionor must indicate such non-compliance on the Optionor Closing Certificate). Each of the representations and covenants as reiterated in the Optionor Closing Certificate will survive the Closing and delivery of the Deed and continue in full force and effect for a period of two (2) years.

6.2 Optionee's Covenants. In addition to Optionee's other agreements and undertakings hereunder, Optionee hereby covenants and agrees with Optionor that, from and after the Effective Date and prior to Closing:

(a) Optionee shall prepare a general development plan for the Land reasonably satisfactory to the Optionor and the City that capitalizes on the adjacency of the Land to the adjoining Headquarters Facility and Stadium Facility (as described in the AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT) and evidences Optionee's intention to create a Class A office and entertainment district on the Land;

(b) Optionee shall have obtained from the City the appropriate zoning to enable the implementation of the general development plan for the Land;

(c) Optionee shall have agreed to the imposition at closing of restrictive covenants (the “Restrictions”) on the Land acceptable to Optionee and Optionor that require, among other matters, that all office buildings located adjacent to the Dallas North Tollway to be Class A (non-tilt wall construction) with structured parking for the minimum parking required under the ordinances of the City. The Restrictions shall provide that they may be amended only with the consent of Optionor and the owner of that portion of the Property subject to the amended Restrictions;

(d) The Restrictions shall also obligate Optionee to construct a prominent monument feature with electronic marquee located within the Land designating the development with a Dallas Cowboys centric name and logo; and

(e) Optionee shall not be in default under any of the terms of this Agreement, the AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT or the Stadium Lease described in the AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT.

ARTICLE VII

CLOSING

7.1 Time and Place. The Closing shall take place on the Closing Date at 10:00 a.m., Frisco, Texas time at the offices of the Title Company.

(a) Additional Optionor Delivery. At the Closing, Optionor shall deliver or cause to be delivered to Optionee, at Optionor's sole cost and expense, in addition to the deliverable items described in Article III above, the FIRPTA Certificate, duly executed and acknowledged by Optionor, unless not required under the Code by virtue of Optionor being a governmental entity.

7.2 Additional Optionee Delivery. At the Closing, Optionee, at Optionee's sole cost and expense, shall deliver to Optionor, in addition to the deliverable items described in Article III above, such evidence or documents as may reasonably be required by Optionor or the Title Company evidencing the status and capacity of Optionee and the authority of the person or persons who are executing the various documents on behalf of Optionee in connection with the purchase of the Land.

7.3 Possession. Exclusive possession of the Land shall be delivered to Optionee by Optionor at the Closing.

7.4 Reporting Person. Optionee agrees to provide the Optionor with such information as may be required for the Optionor to file a Form 1099 or other required form relative to the Closing with the Internal Revenue Service. The content of the Form 1099 shall be approved by Optionor. A copy of the filed Form 1099 or other filed form shall be provided to Optionor and Optionee simultaneous with its being provided to the Internal Revenue Service.

7.5 Costs and Expenses. All costs and expenses in connection with the transactions contemplated by this Agreement shall, except as otherwise expressly provided herein, be borne by Optionee. At the Closing, customary expense items (if any) that would ordinarily be the subject of proration for a transaction of this type shall be prorated between the parties in accordance with customary practices. Any rollback taxes on the Land that might be due or become due for any periods of time either prior to Closing or subsequent to Closing, shall be the responsibility of the Optionee.

ARTICLE VIII

REAL ESTATE COMMISSION

8.1 No Commissions. Optionor and Optionee covenant and agree one with the other that no real estate commissions, finders' fees or brokers' fees have been or will be incurred in connection with this Agreement or the sale(s) contemplated hereby, except with REX Real Estate I, LP, who will be paid by Optionor and Optionee pursuant to a separate written agreement.

ARTICLE IX

REMEDIES OF DEFAULT

9.1 Optionor Default. In the event Optionor fails to deliver the Deed or other closing documents as and when required hereunder, then Optionee shall be entitled to either (i) enforce specific performance hereunder, or (ii) terminate this Agreement, as its sole and exclusive remedies. Both Optionor and Optionee expressly acknowledge and agree that the harm that would be caused by such a breach or default by Optionor is incapable or very difficult of accurate estimation, and that the above provisions and remedies are accordingly reasonable in light of the intent of the parties and the circumstances surrounding the execution of this Agreement.

9.2 Optionee Default. In the event of a default hereunder by Optionee, Optionor shall have the right if Optionee does not cure such failure within five (5) days after receipt of written notice, as Optionor's sole remedy for such default, to terminate this Agreement.

ARTICLE X

MISCELLANEOUS

10.1 Notices. All notices, demands or other communications of any type given by Optionor to Optionee or by Optionee to Optionor, whether required by this Agreement or in any way related to the transactions contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Section 10.1. All such notices shall be in writing and delivered to the person to whom the notice is directed, either by reputable independent expedited delivery service providing written proof of delivery, or by United States mail, postage prepaid, as a Registered or Certified item, Return Receipt Requested. Notices delivered by expedited delivery service shall be deemed to have been given at the time of such delivery to the office of the addressee and notices delivered by mail as set forth above shall be effective forty-eight (48) hours after such notice is deposited in a Post Office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed and addressed as provided below.

The proper address(es), in either such event, for Optionee:

Blue Star Frisco, L.P.
One Cowboys Parkway
Irving, Texas 75063
Attn: Stephen Jones

With copies to:

Blue Star Frisco, L.P.
One Cowboys Parkway
Irving, Texas 75063
Attn: General Counsel

Blue Star Frisco, L.P.
8000 Warren Parkway #100
Frisco Texas 75034
Attn: Joe Hickman

Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attn: Denis Braham and Barry Knight

The proper address(es) for Optionor:

City of Frisco
6891 Main Street
Frisco, Texas 75034
Attn: City Manager

With copies to:

Abernathy, Roeder, Boyd & Joplin, P.C.
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Attn: Randy Hullett and Robert Roeder

Any party hereto may change the address for notice specified above by giving the other party ten (10) days' advance written notice of such change of address.

10.2 Successors and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives and permitted successors and assigns. Notwithstanding anything to the contrary set forth herein, however, it is hereby agreed that Optionee shall have the right from time to time or at any time to transfer all or any portion of Optionee's rights, interests and options under this Agreement to any other person or

party affiliated with Optionee (including, without limitation, any party or entity owned or controlled by, owning or controlling and/or under common ownership or control with Optionee) upon notice to, but without the consent of, Optionor.

10.3 No Recordation. Optionor and Optionee hereby acknowledge that this Agreement shall not be recorded of public record in Collin County, Texas, or any other county in Texas. Should either party ever record or attempt to record this Agreement, then, notwithstanding anything herein to the contrary, said recordation or attempt at recordation shall constitute a default by such party hereunder, and, in addition to the other remedies provided for herein, the non-defaulting party shall have the express right to terminate this Agreement by filing a notice of said termination in the applicable real property records for Collin County, Texas. Notwithstanding the foregoing, the parties hereby agree to execute and acknowledge, and to then file, at Optionee's cost, the Memorandum of Option in the applicable real property records of Collin County, Texas.

10.4 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE OBLIGATIONS OF THE PARTIES HERETO ARE AND SHALL BE PERFORMABLE IN THE COUNTY WHEREIN THE LAND IS LOCATED. BY EXECUTING THIS AGREEMENT, EACH PARTY HERETO EXPRESSLY (a) CONSENTS AND SUBMITS TO PERSONAL JURISDICTION CONSISTENT WITH THE PREVIOUS SENTENCE, (b) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT SUCH VENUE IS NOT PROPER OR CONVENIENT, AND (c) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW. ANY FINAL JUDGMENT ENTERED IN AN ACTION BROUGHT HEREUNDER SHALL BE CONCLUSIVE AND BINDING UPON THE PARTIES HERETO.

10.5 No Oral or Implied Modification. This Agreement may not be modified or amended, except by an agreement in writing signed by both Optionor and Optionee.

10.6 No Oral or Implied Waiver. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

10.7 Time of Essence. Time is of the essence in the performance of the covenants contained in this Agreement.

10.8 Attorneys' Fees. In the event it becomes necessary for either party hereto to file a suit to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred by such prevailing party in such suit.

10.9 Headings. The descriptive headings of the various Articles and Sections contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

10.10 Entire Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

10.11 Partial Invalidity. If any clause or provisions of this Agreement is or should ever be held to be illegal, invalid or unenforceable under any present or future law applicable to the terms hereof, then and in the event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and that in lieu of each such clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

10.12 Counterpart Execution. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of all persons required to bind any party, appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart hereof containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart hereof may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart hereof identical thereto except having attached to it additional signature pages.

10.13 Holidays. In the event that the date upon which any duties or obligations hereunder to be performed shall occur upon a Saturday, Sunday or legal holiday, then, in such event, the due date for performance of any duty or obligation shall thereupon be automatically extended to the next succeeding business day.

10.14 Further Assurances. Optionor and Optionee each agree that at any time, or from time to time, after the execution of this Agreement and whether before or after the exercise of the Option, each party will, upon the request of the other party hereto, execute and deliver such further documents and do such further acts and things as such other party may reasonably request in order to effect fully the purposes of this Agreement.

10.15 Signage. During the Option Period and subject to the City sign ordinances and any other applicable rules or regulations, Optionee, at Optionee's discretion and sole cost and expense, shall have the right to install signs that advertise the "Future World Corporate Headquarters of the Dallas Cowboys" and signs for the purpose of marketing the development of the Land.

[SIGNATURES ON NEXT PAGE]

EXECUTED on this the _____ day of _____, 2013, by Optionor, but to be effective as of the Effective Date.

OPTIONOR:

FRISCO COMMUNITY DEVELOPMENT CORPORATION

By:_____

EXECUTED on this the _____ day of _____, 2013, by Optionee, but to be effective as of the Effective Date.

OPTIONEE:

BLUE STAR FRISCO, L.P.,
a Texas limited partnership

By: Blue Star Investments, Inc.,
a Texas corporation,
its general partner

By:_____
Name: Jerral W. Jones
Title: President

ATTACHMENTS:

Exhibit "A" - Land Description
Exhibit "B" - Deed
Exhibit "C" - Memorandum of Option

EXHIBIT "A"

LAND DESCRIPTION

Land description to be provided pursuant to Section 4.1 of the AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT.

EXHIBIT "B"

DEED

The form of Deed follows this cover page

SPECIAL WARRANTY DEED

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS THAT:
COUNTY OF COLLIN §

The FRISCO COMMUNITY DEVELOPMENT CORPORATION, a duly incorporated corporation of the State of Texas ("Grantor"), for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00), and other good and valuable consideration paid by BLUE STAR FRISCO, LP, a Texas limited partnership ("Grantee"), the receipt and sufficiency of which are hereby acknowledged and confessed, subject to the exceptions, liens, encumbrances, terms and provisions hereinafter set forth and described, has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does hereby GRANT, BARGAIN, SELL and CONVEY, unto Grantee, all of that certain lot, tract or parcel of land situated in Frisco, Collin County, Texas, and being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes;

TOGETHER WITH, all and singular, the rights, benefits, privileges, easements, tenements, hereditaments, appurtenances and interests thereon or in anywise appertaining thereto and with all improvements located thereon (said land, rights, benefits, privileges, easements, tenements, hereditaments, appurtenances, improvements and interests being hereinafter referred to as the "Land").

For the same consideration recited above, Grantor hereby BARGAINS, SELLS and TRANSFERS, without warranty, express or implied, all interest, if any, of Grantor in (i) strips or gores, if any, between the Land and abutting or immediately adjacent properties, and (ii) any land lying in or under the bed of any street, alley, road or right-of-way, opened or proposed, abutting or immediately adjacent to the Land, but only in its capacity as the owner of fee simple title of any such interest and not in its capacity as a governmental authority.

This conveyance is made subject and subordinate to the encumbrances and exceptions ("Permitted Exceptions") described in Exhibit "B" attached hereto and incorporated herein by reference for all purposes, but only to the extent they affect or relate to the Land, and without limitation or expansion of the scope of the special warranty herein contained.

TO HAVE AND TO HOLD the Land, subject to the Permitted Exceptions as aforesaid, unto Grantee, and Grantee's successors and assigns, forever; and Grantor does hereby bind Grantor, and Grantor's successors and assigns, to WARRANT and FOREVER DEFEND, all and singular, the Property, subject to the Permitted Exceptions unto Grantee, and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

IT IS UNDERSTOOD AND AGREED THAT GRANTOR IS NOT MAKING ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE (OTHER THAN GRANTOR'S WARRANTY OF TITLE SET FORTH HEREIN),

ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY. GRANTEE HAS CONDUCTED INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND IS RELYING UPON SAME, AND ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY GRANTEE'S INSPECTIONS AND INVESTIGATIONS. GRANTEE HAS TAKEN WHATEVER ACTION AND PERFORMED WHATEVER INVESTIGATIONS AND STUDIES GRANTEE DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OF, OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO, ANY HAZARDOUS AND/OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY. GRANTEE ACCEPTS THE PROPERTY "AS IS, WHERE IS", WITH ALL FAULTS AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY GRANTOR OR ANY THIRD PARTY.

(SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE)

EXECUTED as of the _____ day of _____, 20___.

GRANTOR:

FRISCO COMMUNITY DEVELOPMENT CORPORATION

Exhibit Only

_____

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was ACKNOWLEDGED before me, on the _____ day of _____, 20___, by _____, the _____ of the FRISCO COMMUNITY DEVELOPMENT CORPORATION, a duly incorporated corporation of the State of Texas, on behalf of said corporation.

[S E A L]

_____
Notary Public, State of Texas

My Commission Expires:

_____

_____
Printed Name of Notary Public

GRANTEE'S ADDRESS FOR TAX NOTICES:

Blue Star Frisco, L.P.
8000 Warren Parkway #100
Frisco Texas 75034
Attn: Stephen Jones

When recorded, return to:

Barry R. Knight, Esq.
Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201

EXHIBIT "A"

LAND DESCRIPTION

[Land Description to be subsequently inserted here]

EXHIBIT "B"

PERMITTED EXCEPTIONS

[Permitted Exceptions to be subsequently inserted here]

EXHIBIT "C"

MEMORANDUM OF OPTION

The Memorandum of Option follows this cover page.

MEMORANDUM OF OPTION

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS
THAT:
COUNTY OF COLLIN §

This MEMORANDUM OF OPTION is made and entered into as of the _____ day of _____, 2013, by and between the FRISCO COMMUNITY DEVELOPMENT CORPORATION, a duly incorporated corporation of the State of Texas ("Optionor"), and BLUE STAR FRISCO, L.P., a Texas limited partnership ("Optionee").

W I T N E S S E T H

Pursuant to that certain Purchase Option Agreement (herein so called), dated effective _____, 2013 (the "Effective Date"), by and between Optionor and Optionee, Optionor has granted to Optionee an Option (herein so called) to purchase those certain tracts or parcels of land (the "Land") which are described on Exhibit A, attached hereto and incorporated herein by reference for all purposes, together with certain other rights and interests described in the Purchase Option Agreement (the Land and such other rights and interests being hereinafter referred to collectively as the "Land").

The Option expires on September 1, 2017 (the "Option Termination Date").

This Memorandum of Option is executed pursuant to the provisions of the Purchase Option Agreement, and is not intended to vary or supersede the terms and conditions of the Purchase Option Agreement. In the event any conflict exists between this Memorandum of Option and the Purchase Option Agreement, the provisions of the Purchase Option Agreement shall control.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Memorandum of Option as of the day and year first above written.

[SIGNATURES ON NEXT PAGE]

EXECUTED on this the _____ day of _____, 2013, by Optionee, but to be effective as of the Effective Date.

OPTIONEE:

BLUE STAR FRISCO, L.P.,
a Texas limited partnership

By: Blue Star Investments, Inc.,
a Texas corporation,
its general partner

By: Exhibit Only
_____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was ACKNOWLEDGED before me, on the ___ day of _____, 2013, by _____, the _____, of Blue Star Investments, Inc., a Texas corporation, the general partner of Blue Star Frisco, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.

[S E A L]
_____

_____

Notary Public, State of Texas

My Commission Expires:

_____

_____

Printed Name of Notary Public

EXECUTED on this the _____ day of _____, 2013, by Optionor, but to be effective as of the Effective Date.

OPTIONOR:

FRISCO COMMUNITY DEVELOPMENT CORPORATION

By: Exhibit Only

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was ACKNOWLEDGED before me, on the _____ day of _____, 20___, by _____, the _____ of the FRISCO COMMUNITY DEVELOPMENT CORPORATION, a duly incorporated corporation of the State of Texas, on behalf of said corporation.

[S E A L]

_____

Notary Public, State of Texas

My Commission Expires:

_____

_____

Printed Name of Notary Public

EXHIBIT H

OCCUPANCY ASSURANCE AGREEMENT

OCCUPANCY ASSURANCE AGREEMENT

by

BLUE STAR LAND, L.P.,
a Texas Limited Partnership

for the benefit of, and accepted by

CITY OF FRISCO, TEXAS
a duly incorporated home rule city of the State of Texas

_____ ___, 2013

OCCUPANCY ASSURANCE AGREEMENT

This Occupancy Assurance Agreement (this "Agreement") is executed this _____ day of _____, 2013, by BLUE STAR LAND, L.P., a Texas Limited Partnership ("Blue Star Land"), for the benefit of, and accepted by, the CITY OF FRISCO, TEXAS, a duly incorporated home rule city of the State of Texas ("City").

WHEREAS, the City and Blue Star Stadium, Inc., a Texas corporation ("Blue Star Stadium") have, of even date herewith, entered into that certain Facilities Lease Agreement (the "Lease") pursuant to which Blue Star Stadium will lease a stadium facility, outdoor practice facilities and parking facilities (the "Stadium Project") from the City under the terms set forth in the Lease; and

WHEREAS, the Lease obligates Blue Star Stadium to enter into a sublease with the Dallas Cowboys Football Club., Ltd., (the "Team") and requires the Team to use the Stadium Facilities as the primary Team practice facility pursuant to the provision thereof during the Term of the Lease (the "Assured Obligation"); and

WHERES, the City has agreed to construct the Stadium Facilities for which it intends to incur $90,000,000.00 in debt (the "City Debt"); and

WHEREAS, the City has agreed to create a Tax Increment Reinvestment Zone ("TIRZ#5") on land adjacent to the Stadium Facilities and construct up to 2,000 structured parking spaces for which it intends to incur up to $20,000,000.00 in debt (the "TIRZ#5 Parking Debt"); and

WHEREAS, in the event that the City terminates the Lease with Blue Star Stadium on account of an event of default related to the Assured Obligation (an "Event of Default"), Blue Star Land has agreed to pay to the City a liquidated amount as set forth herein (the "Assurance Obligation").

NOW, THEREFORE, as an inducement to City for entering into the Lease, Blue Star Land and City hereby agree as follows:

1. Assurance Obligation. Upon the occurrence of the Event of Default described above, Blue Star Land hereby unconditionally and irrevocably agrees to pay to the City the Assurance Obligation.

2. Assurance Obligation Amount. The Assurance Obligation due by Blue Star Land shall be the amount shown on the amortization schedule ("Schedule") attached hereto as Exhibit A, which is incorporated herein for all purposes (the amortization schedule shall be that which coincides with the number of interest only years in the City Debt), as the remaining balance shown on the date of the Event of Default, assuming that the commencement date of the Schedule is the date of the issuance of the City Debt.

3. Scope and Extent of Assurance. The obligation of Blue Star Land under Section 1 hereof is absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Assurance Obligation, and, to the fullest extent permitted by applicable

law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 3 that the obligations of Blue Star Land hereunder shall be absolute and unconditional under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Blue Star Land hereunder which shall remain absolute and unconditional as described above:

(a) at any time and from time to time, without notice to Blue Star Land, the time for any performance of or compliance with any of the Assured Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of the Lease be done or omitted;

(c) the Lease, or any of them, may be amended, modified, supplemented or terminated, in whole or in part;

(d) the Assured Obligation shall be modified, supplemented or amended in any respect, or any right under any of the Lease shall be waived.

4. Waiver. Blue Star Land hereby waives diligence, presentment, demand of payment, protest and all notice whatsoever, and any requirement that the City exhaust any right, power or remedy or proceed against Blue Star Stadium, Blue Star HQ, Inc., or Blue Star Frisco, L.P. ("Blue Star Frisco") or their successors or assigns (the "Obligor Parties"), under the Lease as a prerequisite or condition to pursuit or collection by the City under this Agreement.

5. Period of Assurance. The obligations of Blue Star Land as to the Assured Obligations shall continue in full force and effect against Blue Star Land in accordance with the terms hereof, whereupon this Agreement shall terminate and Blue Star Land shall have no further liability hereunder. This Agreement is irrevocably binding upon and enforceable against Blue Star Land and the successors of Blue Star Land in accordance with the terms hereof, and shall inure to the benefit of the City and its successors and assigns.

6. Primary Liability of Blue Star Land. This is a primary and continuing guaranty of payment and not of collection of the Assured Obligation. Blue Star Land agrees that neither bankruptcy, insolvency, other disability, cessation of existence or dissolution of any of the Obligor Parties shall in any manner impair, affect, or release the liability of Blue Star Land hereunder, and Blue Star Land shall be and remain fully liable hereunder in accordance with the terms hereof. Blue Star Land understands and acknowledges that, by virtue of this Agreement, Blue Star Land has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to Obligor Parties. Until all of the obligations to the City with respect to the Assurance Obligation have been discharged in full or otherwise of no further force or effect, any and all rights of subrogation which Blue Star Land may have or be entitled to against any Obligor Party shall be and are hereby subordinated to the rights of City against such Obligor Party with respect thereto.

7. Collateral Security. The obligations of Blue Star Land hereunder are secured by deed of trust liens on those properties described in Exhibit B attached hereto and incorporated

herein for all purposes (the "Lands") on the form of the deed of trust attached as Exhibit C. Anything to the contrary contained in this Agreement notwithstanding, in the Event of Default, to satisfy the payment of the Assurance Obligation, City agrees to look solely to the Lands and its rights and remedies under the terms of the deeds of trust; however, in the event Blue Star Land fails to deliver the deeds of trust, encumbers such Lands, or any of them, or for any reason City is unable to enforce its remedies under the deeds of trust, the obligation to pay the Assurance Obligation shall become the personal and recourse obligation of Blue Star Land.

8. Additional Collateral. In the event Blue Star Frisco exercises its option to purchase the land described in the Purchase Option Agreement (the "Option Land") by and between Frisco Community Development Corporation and Blue Star Frisco, of even date herewith, Blue Star Land shall cause Blue Star Frisco to deliver a deed of trust creating a first lien on the Option Land to City as additional collateral under this Agreement.

9. Substitution or Reduction of Collateral. During the term of this Agreement and so long as no Event of Default exists and subject to the consent of City, which consent shall not be unreasonably withheld, conditioned, or delayed, Blue Star Land shall have the right to substitute one or more deeds of trust creating liens on one or more other properties, or substitute other things of value, and obtain a release of the deed of trust lien on one or more of or portions of the Lands, the Option Land, or substitutions thereof (collectively, "Collateral Lands"), from time to time, provided that in the case of a substitution of collateral, the value of the land of such substitute deed of trust lien or other thing of value is equal or greater in value to the value of the land or thing of value being released and in the case of a reduction of collateral, the value of the Collateral Lands or other things of value is equal or greater in value to the value of the Assurance Obligation set forth in the Schedule at the time of the substitution or reduction. Blue Star Land shall provide the City with a survey and legal description of the land which is to secure the deed of trust lien, together with a title commitment showing the lien to be a first and prior lien and an MAI appraisal or other evidence of value reasonably acceptable to City to substantiate the substitution or reduction of collateral as set forth above.

10. Place of Performance. All payments to be made hereunder shall be payable in Collin County, Texas.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of Texas, and is intended to be performed in accordance with and as permitted by such laws. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or application thereof shall be prohibited by or be invalid under such law, such provision or application (as the case may be) shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or other applications or the remaining provisions of this Agreement.

12. No Third Party Beneficiaries. There shall be no third party beneficiaries of this Agreement.

13. Notices. Any notices given to Blue Star Land or City hereunder shall be given in the manner set forth in the Lease, but to the respective addresses set forth beneath the parties'

signatures below or at such other addresses as the parties may hereafter designate in writing from time to time.

14. Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

15. Modifications. This Agreement may not be modified except by a writing signed by the parties hereto.

[The remainder of this page is intentionally left blank.]

This Agreement has been executed and delivered as of the date first written above.

BLUE STAR LAND, L.P.,
a Texas Limited Partnership

By: Blue Star Investments, Inc.,
a Texas corporation,
its general partner

By:_____

Address(es) for notices pursuant to Section 8:
Blue Star Land, L.P.
One Cowboys Parkway
Irving, Texas 75063
Attn: J. Stephen Jones

With copies to:

Blue Star Land, L.P.
One Cowboys Parkway
Irving, Texas 75063
Attn: General Counsel

Blue Star Land, L.P.
8000 Warren Parkway #100
Frisco Texas 75034
Attention: Joe Hickman

And with copies to:

Winstead PC
500 Winstead Building
2729 N. Harwood Street
Dallas, Texas 75201
Attn: Denis Clive Braham and Barry Knight

Exhibit "A"

AMORTIZATION WITH TWO YEAR'S INTEREST ONLY

Year	Beginning Principal	Interest	Principal	Ending Principal	$4,139,131.05
1	$60,000,000	$2,550,000	$0	$60,000,000	
2	$60,000,000	$2,550,000	$0	$60,000,000	
3	$60,000,000	$2,550,000	$1,589,131	$58,410,869	
4	$58,410,869	$2,482,462	$1,656,669	$56,754,200	
5	$56,754,200	$2,412,053	$1,727,078	$55,027,122	
6	$55,027,122	$2,338,653	$1,800,478	$53,226,644	
7	$53,226,644	$2,262,132	$1,876,999	$51,349,645	
8	$51,349,645	$2,182,360	$1,956,771	$49,392,874	
9	$49,392,874	$2,099,197	$2,039,934	$47,352,940	
10	$47,352,940	$2,012,500	$2,126,631	$45,226,309	
11	$45,226,309	$1,922,118	$2,217,013	$43,009,296	
12	$43,009,296	$1,827,895	$2,311,236	$40,698,060	
13	$40,698,060	$1,729,668	$2,409,463	$38,288,597	
14	$38,288,597	$1,627,265	$2,511,866	$35,776,731	
15	$35,776,731	$1,520,511	$2,618,620	$33,158,111	
16	$33,158,111	$1,409,220	$2,729,911	$30,428,200	
17	$30,428,200	$1,293,198	$2,845,933	$27,582,267	
18	$27,582,267	$1,172,246	$2,966,885	$24,615,383	
19	$24,615,383	$1,046,154	$3,092,977	$21,522,405	
20	$21,522,405	$914,702	$3,224,429	$18,297,976	
21	$18,297,976	$777,664	$3,361,467	$14,936,509	
22	$14,936,509	$634,802	$3,504,329	$11,432,180	
23	$11,432,180	$485,868	$3,653,263	$7,778,917	
24	$7,778,917	$330,604	$3,808,527	$3,970,389	
25	$3,970,389	$168,742	$3,970,389	$0	

AMORTIZATION WITH THREE YEAR'S INTEREST ONLY

Year	Beginning Principal	Interest	Principal	Ending Principal	$4,251,740.60
1	$60,000,000	$2,550,000	$0	$60,000,000	
2	$60,000,000	$2,550,000	$0	$60,000,000	
3	$60,000,000	$2,550,000	$0	$60,000,000	
4	$60,000,000	$2,550,000	$1,701,741	$58,298,259	
5	$58,298,259	$2,477,676	$1,774,065	$56,524,195	
6	$56,524,195	$2,402,278	$1,849,462	$54,674,733	
7	$54,674,733	$2,323,676	$1,928,064	$52,746,668	
8	$52,746,668	$2,241,733	$2,010,007	$50,736,661	
9	$50,736,661	$2,156,308	$2,095,433	$48,641,228	
10	$48,641,228	$2,067,252	$2,184,488	$46,456,740	
11	$46,456,740	$1,974,411	$2,277,329	$44,179,411	
12	$44,179,411	$1,877,625	$2,374,116	$41,805,295	
13	$41,805,295	$1,776,725	$2,475,016	$39,330,280	
14	$39,330,280	$1,671,537	$2,580,204	$36,750,076	
15	$36,750,076	$1,561,878	$2,689,862	$34,060,214	
16	$34,060,214	$1,447,559	$2,804,182	$31,256,032	
17	$31,256,032	$1,328,381	$2,923,359	$28,332,673	
18	$28,332,673	$1,204,139	$3,047,602	$25,285,071	
19	$25,285,071	$1,074,616	$3,177,125	$22,107,946	
20	$22,107,946	$939,588	$3,312,153	$18,795,793	
21	$18,795,793	$798,821	$3,452,919	$15,342,873	
22	$15,342,873	$652,072	$3,599,668	$11,743,205	
23	$11,743,205	$499,086	$3,752,654	$7,990,550	
24	$7,990,550	$339,598	$3,912,142	$4,078,408	
25	$4,078,408	$173,332	$4,078,408	$0	

Exhibit "B"
(Descriptions of Property Secured by Deeds of Trust)

TRACT 1

76.6134 ACRES

BEING of a 76.6134 acre tract of land out of the German Emigration Company Survey, Abstract No. 358, in Collin County, Texas, being all of a tract of land described in deed to 183 Land Corporation, recorded in County Clerk's File No. 97-0083361, of the Official Public Records of Real Property of Collin County, Texas and being more particularly described as follows:

BEGINNING at a 5/8" iron rod with "KHA" cap set at the north end of a right-of-way corner clip at the intersection of the south right-of-way line of U.S. 380 (a variable width right-of-way) and the west right-of-way line of S.H. 289 (a variable width right-of-way); said point being the northernmost northeast corner of said 183 Land Corporation tract; from said point a highway monument found bears South 80°17' West, a distance of 18.5 feet;

THENCE with the said west right-of-way line of S.H. 289, the following courses and distances:

South 21°18'51" East, a distance of 70.73 feet (Deed 92.45 feet) to a 5/8" iron rod with "KHA" cap set at an angle point; from said point, a 1/2" iron rod found bears South 22°08' East, a distance of 15.3 feet;

South 00°33'48" East, a distance of 561.35 feet (Deed 554.14 feet) to a 5/8" iron rod with "KHA" cap set at an angle point; from said point a wood marker found bears South 00°59' East, a distance of 24.7 feet;

South 05°40'48" East, a distance of 447.90 feet to a highway monument found at an angle point;

South 08°08'21" West, a distance of 341.74 feet to a highway monument found at an angle point;

South 04°44'51" East, a distance of 119.12 feet to a highway monument found in a creek (Parvin Branch) for corner; said point being the northeast corner of a tract of land described as "Tract 2" in deed to Blue Star Land, L.P. recorded in Volume 4448, Page 1857 of the Deed Records of Collin County, Texas;

THENCE departing the said west right-of-way line of S.H. 298, with the north line of said Blue Star Land, L.P. tract and generally along said creek, the following courses and distances:

South 85°06'34" West, a distance of 702.88 feet to an angle point in said creek;

South 60°16'18" West, a distance of 204.45 feet to an angle point in said creek;

North 11°30'25" West, a distance of 297.75 feet to an angle point in said creek;

North 74°40'27" East, a distance of 91.89 feet to an angle point in said creek;

North 06°03'41" East, a distance of 169.77 feet to an angle point in said creek;

North 41°56'43" West, a distance of 233.51 feet to an angle point in said creek;

South 51°17'25" West, a distance of 457.24 feet to an angle point in said creek;

North 85°18'43" West, a distance of 236.39 feet to an angle point in said creek;

North 34°48'47" West, a distance of 442.82 feet to an angle point in said creek;

North 86°36'59" West, a distance of 397.49 feet to an angle point;

South 62°48'44" West, a distance of 705.82 feet (Deed 705.96 feet) to a point for corner in the east right-of-way line of the St. Louis and Santa Fe Railroad (a 100-foot wide right-of-way); said point being the westernmost northwest corner of said Blue Star Land, L.P. tract;

THENCE with the said east right-of-way line of the St. Louis and Santa Fe Railroad, North 11°21'37" East, a distance of 1172.80 feet (Deed 1172.91 feet) to a 5/8" iron rod with "KHA" cap set for corner; said point being the intersection of said east right-of-way line and the said south right-of-way line of U.S. 380; from said point a 5/8" iron rod found (disturbed) bears North 86°16' West, 0.5 feet;

THENCE with the said south right-of-way line of U.S. 380, the following courses and distances;

South 89°50'51" East, a distance of 250.90 feet to a 5/8" iron rod with "KHA" cap set for corner;

North 84°26'31" East, a distance of 703.49 feet to a 5/8" iron rod with "KHA" cap set for corner;

North 88°14'36" East, a distance of 300.17 feet to a 5/8" iron rod with "KHA" cap set for corner;

South 89°50'51" East, a distance of 624.03 feet (Deed 499.63 feet) to a 5/8" iron rod with "KHA" cap set for corner;

North 89°12'09" East, a distance of 713.51 feet to the **POINT OF BEGINNING** and containing 76.6134 acres or 3,337,281 square feet of land.

TRACT 2

93.6657 ACRES

BEING of a 96.6657 acre tract of land out of the German Emigration Company Survey, Abstract No. 358, in Collin County, Texas, being all of a tract of land described in deed to Blue Star Land, L.P., recorded in County Clerk's File No. 99-0081760, of the Official Public Records of Real Property of Collin County, Texas and being more particularly described as follows:

COMMENCING at a 5/8" iron rod with "KHA" cap set at the north end of a right-of-way corner clip at the intersection of the south right-of-way line of U.S. 380 (a variable width right-of-way) and the west right-of-way line of S.H. 289 (a variable width right-of-way); said point being the northernmost northeast corner of a tract of land described in deed to 183 Land Corporation, recorded in County Clerk's File No. 97-0083361, of the Official Public Records of Real Property of Collin County, Texas; from said point a highway monument found bears South 80°17' West, a distance of 18.5 feet;

THENCE with the said west right-of-way line of S.H. 289, the following courses and distances:

South 21°18'51" East, a distance of 70.73 feet (deed calls 92.45 feet) to a 5/8" iron rod with "KHA" cap set at an angle point; from said point, a 1/2" iron rod found bears South 22°08' East, a distance of 15.3 feet;

South 00°33'48" East, a distance of 561.35 feet to a 5/8" iron rod with "KHA" cap set at an angle point; from said point a wood marker found bears South 00°59' East, a distance of 24.7 feet;

South 05°40'48" East, a distance of 447.90 feet to a highway monument found at an angle point;

South 08°08'21" West, a distance of 341.74 feet to a highway monument found at an angle point;

South 04°44'51" East, a distance of 119.12 feet to a highway monument found in a creek (Parvin Branch) for the POINT OF BEGINNING; said point being the southernmost southeast corner of said 183 Land Corporation tract;

THENCE with the said west right-of-way line of S.H. 289, the following courses and distances:

South 04°44'51" East, a distance of 278.12 feet to a highway monument found at an angle point;

South 09°26'05" East, a distance of 261.09 feet to a highway monument found at an angle point;

South 00°23'00" East, a distance of 510.68 feet to a 5/8" iron rod found for corner at the intersection of the said west right-of-way line of S.H. 289 and the general center of County Road No. 26 (a possible prescriptive right-of-way); said point also being in the north line of a tract of land described in deed to Frisco Enterprises, L.P. recorded in County Clerk's File No. 92-0007195, of the Official Public Records of Real Property of Collin County, Texas;

THENCE departing the said west right-of-way line of S.H. 289, along the north line of said Frisco Enterprises, L.P. tract and generally along said County Road No. 26, South 89°27'10" West, a distance of 3201.49 feet to a 5/8" iron rod with "KHA" cap set for corner in the east right-of-way line of the St. Louis & Santa Fe Railroad (a 100-foot wide right-of-way); said point being the northwest corner of said Frisco Enterprises, L.P. tract; from said point a 1/4" iron rod found bears South 89°11' West, a distance of 1.4 feet;

THENCE along the said east right-of-way line of the St. Louis & Santa Fe Railroad, North 11°21'37" East, a distance of 1398.52 feet to a point in a creek for corner; said point being the westernmost southwest corner of said 183 Land Corporation tract;

THENCE departing the said east right-of-way line of the St. Louis & Santa Fe Railroad, along the south line of said 183 Land Corporation tract and generally along said creek, the following courses and distances:

North 62°48'44" East, a distance of 705.82 feet to an angle point;

South 86°36'59" East, a distance of 397.49 feet to an angle point in said creek;

South 34°48'47" East, a distance of 442.82 feet to an angle point in said creek;

South 85°18'43" East, a distance of 236.39 feet to an angle point in said creek;

North 51°17'25" East, a distance of 457.24 feet to an angle point in said creek;

South 41°56'43" East, a distance of 233.51 feet to an angle point in said creek;

South 06°03'41" West, a distance of 169.77 feet to an angle point in said creek;

South 74°40'27" West, a distance of 91.89 feet to an angle point in said creek;

South 11°30'25" East, a distance of 297.75 feet to an angle point in said creek;

North 60°16'18" East, a distance of 204.45 feet to an angle point in said creek;

North 85°06'34" East, a distance of 702.88 feet to the POINT OF BEGINNING and containing 93.6657 acres or 4,080,076 square feet of land.

TRACT 3

35 Acres

BEING a tract of land situated in the Thomas J. Jamison Survey, Abstract No. 481, Collin County, Texas being all of the 35.00 acre tract of land described in deed to Preston 380 Investment Partners, Ltd. recorded in Volume 5115, Page 3527 of the Land Records of Collin County, Texas and being more particularly described as follows:

BEINNING at a 5/8” iron rod found in the south right-of-way line of U.S. Highway No. 380 for the northeast corner of a 155 acre tract described in deed to Highway 380/Partners, LTD., as evidenced in a Warranty Deed recorded in Clerk’s File No. 98-0057447, Land Records Collin County, Texas;

THENCE with the northerly most west line of said 155 acre tract, South 01° 40’ 12” East, a distance of 900.00 feet to a 5/8” iron rod set for corner;

THENCE with the southerly most north line of said 155 acre tract, South 88° 19’ 48” West, a distance of 1877.31 feet to a 5/8” iron rod found for corner in the east right-of-way line of Preston Road (State Highway 289 – variable width ROW);

THENCE with the said east right-of-way line, the following courses and distances to wit:

North 07° 16’ 29” East, a distance of 88.51 feet to a 5/8” iron rod set for corner;

North 23° 27’ 51” East, a distance of 771.42 feet to a 5/8” iron rod set for corner;

North 05° 11’ 11” East, a distance of 81.77 feet to a 5/8” iron rod set for corner;

North 45° 59’ 36” East, a distance of 49.01 feet to a 5/8” iron rod set for corner in the south right-of-way line of U.S. Highway No. 380;

THENCE with said south right-of-way line, North 88° 19’ 48” East, a distance of 1489.85 feet to the POINT OF BEGINNING and containing 35 acres of land.

TRACT 4

71.3130 Acres

BEING a tract of land situated in the Thomas J. Jamison Survey, Abstract No. 481, Collin County, Texas and being part of Tract 1, as conveyed from Gaylord Properties, Inc. to Highway 380/Preston Partners, LTD., as evidenced in a Warranty Deed recorded in Clerk’s File No. 96-0057447, Land Records Collin County, Texas and being more particularly described as follows:

BEGINNIG at a 5/8” iron rod found in the south right-of-way line of U.S. Highway No. 380 for the northeast corner of a 35 acre tract of land described in deed to Preston 380 Investment Partners, Ltd. recorded in Volume 5115, Page 3527 of the Land Records of Collin County, Texas

THENCE with the said south right-of-way line, the following courses and distances to wit:

North 88° 19’ 48: East, a distance of 88.37 feet to a concrete monument found for corner;

South 85° 57’ 46” East, a distance of 100.51 feet to a 5/8” iron rod set for corner;

North 88° 19’ 43” East, a distance of 200.00 feet to a 5/8” iron rod found for corner;

South 88° 48’ 32” East, a distance of 200.25 feet to a 5/8” iron rod found for corner;

North 88° 23’ 14” East, a distance of 99.39 feet to a 5/8” iron rod found for corner;

North 84° 23’ 13” East, a distance of 200.56 feet to a 5/8” iron rod set for corner;

North 88° 40’ 34” East, a distance of 700.00 feet to a concrete monument found;

North 85° 48’ 49” East, a distance of 68.00 feet to a 5/8” iron rod found for the northwest corner of a tract of land described in deed to SW Hillcrest/380, L.P. recorded in Volume 5252, Page 4949 of the Land Records of Collin County, Texas;

THENCE with the west lines of said SW Hillcrest/380, L.P. tract and along a fence, the following courses and distances to wit:

South 08° 11’ 10” East, a distance of 693.41 feet to a fence corner post found;

South 78° 25’ 49” West, a distance of 284.53 feet to a fence corner post found;

South 02° 08’ 55” West, a distance of 373.44 feet to a fence corner post found;

South 85° 15’ 34” West, a distance of 245.49 feet to a fence corner post found;

South 02° 26’ 25” East, a distance of 185.38 feet to a point in a creek known as Parvin Branch;

THENCE westerly along said creek, the following courses and distances to wit:

North 60° 19’ 56” West, a distance of 45.04 feet to a point for corner;

South 74° 41’ 51” West, a distance of 152.99 feet to a point for corner;

North 26° 19’ 27” West, a distance of 58.59 feet to a point for corner;

North 34° 29’ 24” East, a distance of 57.29 feet to a point for corner;

North 15° 45’ 15” West, a distance of 68.18 feet to a point for corner;

North 70° 49’ 52” West, a distance of 36.62 feet to a point for corner;

North 37° 44’ 17” West, a distance of 207.98 feet to a point for corner;

North 70° 23’ 43” West, a distance of 53.14 feet to a point for corner;

North 51° 13’ 49” West, a distance of 145.69 feet to a point for corner;

North 33° 22’ 32” West, a distance of 49.59 feet to a point for corner;

North 87° 09’ 06” West, a distance of 31.67 feet to a point for corner;

South 66° 41’ 32” West, a distance of 48.09 feet to a point for corner;

South 13° 20’ 08” West, a distance of 57.92 feet to a point for corner;

South 89° 23’ 03” West, a distance of 176.37 feet to a point for corner;

South 70° 52’ 51” West, a distance of 21.78 feet to a point for corner;

South 24° 28’ 17” West, a distance of 26.96 feet to a point for corner;

South 18° 34’ 37” East, a distance of 27.78 feet to a point for corner;

South 23° 18’ 40” West, a distance of 83.72 feet to a point for corner;

South 19° 42’ 35” East, a distance of 66.45 feet to a point for corner;

South 64° 40’ 49” East, a distance of 62.55 feet to a point for corner;

North 81° 04’ 49” East, a distance of 52.37 feet to a point for corner;

South 53° 36’ 29” East, a distance of 48.28 feet to a point for corner;

South 00° 42’ 52” East, a distance of 72.41 feet to a point for corner;

South 64° 49’ 37” West, a distance of 67.58 feet to a point for corner;

South 84° 25’ 05” West, a distance of 139.24 feet to a point for corner;

South 79° 04’ 40” West, a distance of 40.24 feet to a point for corner;

South 53° 58’ 08” West, a distance of 20.19 feet to a point for corner;

North 78° 41’ 41” West, a distance of 49.11 feet to a point for corner;

South 83° 18’ 53” West, a distance of 96.87 feet to a point for corner;

South 79° 41’ 55” West, a distance of 72.29 feet to a point for corner;

North 85° 12’ 24” West, a distance of 106.84 feet to a point for corner;

North 71° 09’ 52” West, a distance of 102.83 feet to a point for corner;

South 57° 50’ 16” West, a distance of 46.67 feet to a point for corner;

South 78° 49’ 06” West, a distance of 18.56 feet to a point for corner;

South 66° 35’ 43” West, a distance of 44.62 feet to a point for corner;

South 30° 40’ 36” West, a distance of 60.09 feet to a point for corner;

South 47° 25’ 01” West, a distance of 146.11 feet to a point for corner;

South 11° 04’ 50” East, a distance of 200.22 feet to a point for corner;

South 37° 36’ 58” West, a distance of 85.07 feet to a point for corner;

South 79° 29’ 34” West, a distance of 38.28 feet to a point for corner;

North 58° 55’ 33” West, a distance of 32.77 feet to a point for corner;

North 84° 09’ 26” West, a distance of 81.41 feet to a point for corner;

South 84° 02’ 47” West, a distance of 252.81 feet to a point for corner;

South 68° 37’ 54” West, a distance of 152.34 feet to a point for corner;

South 66° 02’ 02” West, a distance of 51.27 feet to a point for corner;

South 83° 40’ 04” West, a distance of 40.49 feet to a point for corner;

South 63° 14’ 27” West, a distance of 85.46 feet to a point for corner;

South 19° 00’ 41” West, a distance of 60.93 feet to a point for corner;

South 83° 46’ 15” West, a distance of 59.34 feet to a point for corner;

South 63° 29’ 47” West, a distance of 59.57 feet to a point for corner;

North 69° 22’ 48” West, a distance of 47.19 feet to a point for corner;

North 08° 10’ 17” West, a distance of 13.60 feet to a point for corner;

North 44° 19’ 49” West, a distance of 74.23 feet to a point for corner;

North 70° 14’ 31” West, a distance of 48.38 feet to a point for corner;

South 87° 10’ 56” West, a distance of 14.81 feet to a point for corner;

North 44° 50’ 08” West, a distance of 19.88 feet to a point for corner;

North 16° 27’ 47” West, a distance of 51.62 feet to a point for corner;

North 52° 34’ 16” West, a distance of 42.33 feet to a point for corner;

North 86° 05’ 09” West, a distance of 52.19 feet to a point for corner;

North 40° 59’ 28” West, a distance of 75.70 feet to a point for corner;

North 69° 50’ 17” West, a distance of 81.13 feet to a point for corner;

North 76° 28’ 25” West, a distance of 238.77 feet to a point in the east right-of-way line of Preston Road (State Highway 289 – variable width ROW);

THENCE with said east right-of-way line, the following courses and distances to wit:

North 01° 13’ 46” West, a distance of 220.14 feet to a 5/8” iron rod set for corner;

North 07° 18’ 29” East, a distance of 400.92 feet to a 5/8” iron rod found for the southwest corner of said 35.00 acre tract for corner;

THENCE with the south line of said 35.00 acre tract, North 88° 19’ 48” East, a distance of 1877.31 feet to a 5/8” iron rod set;

THENCE with the east line of said 35.00 acre tract, North 01° 40’ 12” West, a distance of 900.03 feet to the POINT OF BEGINNING and containing 71.3130 acres of land.

Exhibit "C"

(Form of Deed of Trust)

"NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER."

DEED OF TRUST TO SECURE PERFORMANCE

STATE OF TEXAS '
' KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COLLIN '

THAT, _____, whose address is _____, (hereinafter referred to as "Grantor") for the purpose of securing the performance of obligations as hereinafter described, and in consideration of the sum of TEN DOLLARS ($10.00) to us in hand paid by the Trustee hereinafter named, the receipt of which is hereby acknowledged, and for the further consideration of the uses, purposes and trusts hereinafter set forth, have granted, sold and conveyed, and by these presents do grant, sell and convey unto ROBERT H. ROEDER or G. RANDAL HULLETT, Trustee, and his substitutes or successors, all of the following described property situated in Collin County, Texas, to-wit:

> Being a tract of land containing _____ acres, more or less, situated in the _____ Survey, Abstract No. _____ in Collin County, Texas, and being more fully described in Exhibit A attached hereto and made a part hereof for all purposes.

TO HAVE AND TO HOLD the above described property, together with the rights, privileges and appurtenances thereto belonging unto the said Trustee, and to his substitutes or successors forever. And Grantor does hereby bind itself, its successors and assigns to warrant and forever defend the said premises unto the said Trustee, his substitutes or successors and assigns forever, against the claim, or claims, of all persons claiming or to claim the same or any part thereof by, through and under Grantor but not otherwise and subject to the matters described on Exhibit B attached hereto and made a part hereof for all purposes (the "Permitted Exceptions").

This conveyance, however, is made in TRUST to secure the performance of the obligations of BLUE STAR LAND, L.P., a Texas limited partnership (hereinafter referred to as "Blue Star"), as set forth in that one certain Occupancy Assurance Agreement (hereinafter

referred to as the "Occupancy Agreement") executed by and between Blue Star and the CITY OF FRISCO, TEXAS, whose address is 6101 Frisco Square Blvd., 5th Floor, Frisco, Texas 75034 (hereinafter referred to as "Beneficiary"), dated _____, as may be subsequently supplemented or modified, including, but not limited to Blue Star's obligation to pay the Assurance Obligation as set forth and more fully described in said Occupancy Agreement. Blue Star's obligations to perform, including its obligation to pay the Assurance Obligation, shall hereinafter be referred to as "Obligations Secured".

Should BLUE STAR perform all of its Obligations Secured, or should the obligations of Blue Star under the Occupancy Agreement not be called upon by the Beneficiary, then this conveyance shall become null and void and of no further force and effect, and shall be released at the expense of Grantor, by the Beneficiary.

Grantor covenants and agrees as follows:

That it is lawfully seized of said property, and has the right to convey the same; that said property is free from all liens and encumbrances, except for the Permitted Exceptions.

To protect the title and possession of said property and to pay when due all taxes and assessments now existing or hereafter levied or assessed upon said property, or the interest therein created by this Deed of Trust, and furnish Beneficiary with satisfactory evidence of such payment prior to such taxes and assessments becoming delinquent, and to preserve and maintain the lien hereby created as a first and prior lien on said property, including any improvements hereafter made a part of the realty; provided, however, Grantor reserves the right to contest by proper proceedings the payment of any such taxes or assessments so long as it provides assurance to Beneficiary of the payment thereof upon a final disposition of any such contest and so long as the priority of the lien hereby granted is preserved during the pendency of any such contest.

To keep any improvements on said property in good repair and condition, ordinary wear and tear excepted, and not to permit or commit any intentional physical waste thereof; to keep said buildings occupied so as not to impair in any material respect the insurance carried thereon.

To insure and keep insured all improvements now or hereafter created upon said property against loss or damage by fire and windstorm, and any other hazard or hazards as may be customary for commercial property of similar type, and to deliver to Beneficiary the policies of such insurance having attached to said policies such mortgage indemnity clause as Beneficiary shall reasonably request; to deliver renewals of such policies to Beneficiary before any such insurance policies shall expire; and upon any uncured default by Grantor of the Obligations Secured and foreclosure of the lien hereby created any proceeds which Beneficiary may receive under any such policy, or policies, may be applied by Beneficiary, at its option**,** to reduce Blue Star's Obligations Secured, and in such manner as Beneficiary may elect, or Beneficiary may permit Grantor to use said proceeds to repair or replace all improvements damaged or destroyed and covered by said policy.

That in the event Grantor shall fail to keep any improvements on the property hereby conveyed in good repair and condition, or to pay promptly when due all taxes and assessments and furnish satisfactory evidence of payment thereof, as aforesaid, or to preserve the prior lien of this Deed of Trust on said property, or to keep the buildings and improvements insured, as aforesaid, or to deliver the policy, or policies, of insurance or the renewal thereof to Beneficiary, as aforesaid, then Beneficiary may, at his option, upon any uncured default by Grantor of the Obligations Secured but without being required to do so, make such repairs, pay such taxes and assessments, remove any prior liens, and prosecute or defend any suits in relation to the preservation of the prior lien of this Deed of Trust on said property, or insure and keep insured the improvements thereon in an amount not to exceed that above stipulated; that any reasonable and necessary sums which may be so paid out by Beneficiary and all sums paid for insurance premiums, as aforesaid, including the reasonable costs, expenses and attorney's fees paid in any suit affecting said property when necessary to protect the lien hereof shall bear interest from the dates of such payments at the rate of _____% per annum from the due date until paid and shall be deemed a part of the Obligations Secured and recoverable as such in all respects.

That in the event of any uncured default in the Obligations Secured, in accordance with the terms thereof, or of a breach of any of the covenants herein contained to be performed by Grantor or Blue Star, then and in any of such events Beneficiary may elect, after a thirty (30) day written notice of such default and opportunity to cure, to declare the entire Assurance Obligation to be immediately due and payable, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or his successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the above described and conveyed property, then subject to the lien hereof, by mailing and filing notices as required by section 51.002, Texas Property Code, as then amended (successor to articles 3810, Texas Revised Civil Statutes), and otherwise complying with that statute, the Trustee shall sell the above described property, then subject to lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock a.m. and four o'clock p.m., to the highest bidder for cash, selling all of the property as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the purchaser or purchasers, with general warranty binding Grantor, its successors and assigns; and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to himself, which commission shall be due and owing in addition to the attorney's fees provided for in said Occupancy Agreement, and then to Beneficiary the full amount of the Assurance Obligation, attorney's fees and other charges due and unpaid on the Assurance Obligation, rendering the balance of the sales price, if any, to Grantor, its successors and assigns; and the recitals in the conveyance to the purchaser or purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against Grantor, its successors and assigns. Any excess amounts recovered from such sale shall be payable over to Grantor promptly upon any such sale.

It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or his substitute or successors, Beneficiary may at any time before the sale of said property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said Assurance Obligation, and for the foreclosure of this Deed of Trust lien; it is further agreed that if Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this Deed of Trust lien, that he may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, his substitute or successor to sell the property in accordance with the provisions of this Deed of Trust.

Beneficiary, if it is the highest bidder, shall have the right to purchase at any sale of the property, and to have the amount for which such property is sold credited to the Assurance Obligation then owing.

Beneficiary in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness hereby secured has been paid in full, or until said property is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original trustee named herein.

In the event any sale is made of the above described property, or any portion thereof, under the terms of this Deed of Trust, Grantor, its successors and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the Purchaser at such sale, and in the event of their failure to do so they shall thereupon from and after the making of such sale be and continue as tenants at will of such Purchaser, and in the event of their failure to surrender possession of said property upon demand, the Purchaser, its successors or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated.

It is agreed that the lien hereby created shall take precedence over and be a prior lien to any other lien of any character whether vendor's, materialmen's or mechanic's lien hereafter created on the above described property.

It is further agreed that if Grantor, its successors or assigns, while the owner of the hereinabove described property, should commit an act of bankruptcy, or authorize the filing of a voluntary petition in bankruptcy, or should an act of bankruptcy be committed and involuntary proceedings instituted or threatened that is not dismissed within ninety (90) days of the filing thereof, or should the property hereinabove described be taken over by a receiver for Grantor, its successors or assigns, the Assurance Obligation shall, at the option of Beneficiary, immediately become due and payable, and the acting Trustee may then proceed to sell the same under the provisions of this Deed of Trust.

It is agreed that a part of the above described real property may be released from this lien without altering or affecting the priority of the lien created by this Deed of Trust in favor of any junior encumbrancer, mortgagee or purchaser, or any person acquiring an interest in the property hereby conveyed, or any part thereof; it being the intention of the parties hereto to preserve this lien on the property herein described and all improvements thereon, and that may be hereafter constructed thereon, first and superior to any liens that may be placed thereon, or that may be fixed, given or imposed by law thereon after the execution of this instrument notwithstanding any such release of a portion of said property from this lien.

Nothing herein or in said Occupancy Agreement shall ever entitle Beneficiary, upon the arising of any contingency whatsoever, to receive or collect interest in excess of the highest rate allowed by the laws of the State of Texas on the Assurance Obligation, and in no event shall Grantor be obligated to pay interest thereon in excess of such rate.

If this Deed of Trust is executed by only one person or by a corporation the plural reference to Grantor shall be held to include the singular, and all of the covenants and agreements herein undertaken to be performed by and the rights conferred upon the respective Grantor named herein, shall be binding upon and inure to the benefit of not only said parties respectively but also their respective heirs, executors, administrators, grantees, successors and assigns.

Beneficiary may remedy any default, without waiving same, or may waive any default without waiving any prior or subsequent default.

In the event Grantor is an entity other than Blue Star Land, L.P. and only in such event, then this Deed of Trust to Secure Performance is a non-recourse obligation of Grantor and Beneficiary shall look solely to the property hereby encumbered, which property shall be the sole source of repayment from Grantor for the Obligations Secured should Beneficiary choose to elect to foreclose the lien hereby secured.

The provisions of Paragraph 9 of the Occupancy Agreement are incorporated herein for all purposes and in the event of the exercise by Grantor of the rights thereunder to substitute other collateral for the security of the Obligations Secured, then Beneficiary shall release the liens hereby created and this conveyance shall become null and void and of no further force or effect.

(signatures on following page)

EXECUTED on the dates of the acknowledgment, but to be EFFECTIVE on the _____day of _____, 20___.

GRANTOR:

By:_____
_____, its _____

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20___, by _____, on behalf of said _____.

_____
Notary Public - State of Texas

Prepared in the Law Office of:

Abernathy, Roeder, Boyd & Joplin, P.C.
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
870008.0644/lb

After Recording, Return to:

City of Frisco, Texas
Attn: George Purefoy
6101 Frisco Square Blvd., 5th Floor
Frisco, Texas 75034

<u>Exhibit A</u>

Legal Description of Land

EXHIBIT B

Permitted Encumbrances