

**ADDENDUM to  
The Standard Form of Agreement Between  
Owner and Design-Builder  
AIA Document A141 - 2014**

This Addendum to the *Standard Form of Agreement Between Owner and Design-Builder*, AIA Document A141 - 2014 ("Addendum") is entered into this   15   day of   May  , 2023, by and between Falcon Construction Services (the "Design-Builder") and the City of Joshua, Texas, (the "Owner"). This Addendum is entered into to delete from, amend, replace, modify, add to, and/or supplement the *Standard Form of Agreement Between Owner and Design-Builder*, AIA Document A141 - 2014 (the "Agreement"), as set forth herein below.

**WITNESSETH:**

**WHEREAS**, the Owner and Design-Builder desire to enter into the Agreement for the construction of the Joshua Container Park in the City of Joshua, Texas; and

**WHEREAS**, the Owner and Design-Builder desire to clarify and revise certain of the terms and provisions contained in the Agreement; and

**WHEREAS**, the Owner and Design-Builder would not enter into the Agreement save and except for the clarifications and revisions contained herein.

**NOW, THEREFORE:**

**FOR AND IN CONSIDERATION** of the covenants, duties and obligations herein contained together with the covenants, duties and obligations contained in the Agreement, the parties do mutually agree that except as provided for below, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this Addendum and the Agreement, this Addendum shall govern and control. In consideration of the foregoing, and for other good and valuable consideration, the parties agree to modify the Agreement as follows:

**I.**

The following amendments, modifications, replacements, additions, and/or deletions are hereby made to those Sections and Articles of the Agreement identified herein below as follows:

1. Section 1.1.4 is hereby amended by deleting said provision in its entirety.
2. Section 1.3 is hereby amended by checking the box adjacent to the phrase "Litigation in a court of competent jurisdiction" and deleting the boxes and adjacent phrases that allow for the selection of "Arbitration pursuant to Section 14.4" and "Other: (Specify)" which phrases may otherwise be selected for other forms of dispute resolution.

3. Section 1.4.1 is hereby amended by deleting Section 1.4.1 in its entirety and replacing it with a new Section 1.4.1 to read as follows:

**§ 1.4.1 Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement") as well as the Addendum to *Standard Form of Agreement Between Owner and Design-Builder* (AIA A141-2014) attached hereto and incorporated herein for all purposes, and the Addendum to Exhibits A and B to the *Standard Form of Agreement Between Owner and Design-Builder*, contained in AIA Document A141 -- 2014 Exhibit A and AIA Document A141 -- 2014 Exhibit B, respectively; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. For purposes of this Agreement, a Modification is hereby defined to mean and be (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

4. Section 1.4.2 is hereby amended by deleting the third sentence of said Section and replacing it with the following sentence:

After execution of the original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification signed by the parties.

5. Section 1.4.3 is hereby amended by deleting Section 1.4.3 in its entirety and replacing it with a new Section 1.4.3 to read as follows:

**§ 1.4.3 The Work.** The term "Work" means the design, construction and services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and specifically includes, all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

6. Section 1.4.6 is hereby amended by inserting the following provision between the second and third sentences of said Section:

The review of Submittals by Owner 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 and remain

the Design-Builder's responsibility. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

7. Section 1.4.7 is hereby amended by deleting Section 1.4.7 in its entirety and replacing it with a new Section 1.4.7 to read as follows:

**§ 1.4.7** The Owner is the City of Joshua, Texas, and is referred to throughout the Contract Documents as if singular in number. The Owner hereby designates Mike Peacock, City Manager, to represent the Owner. The Owner's representative shall have no implied authority beyond the scope of authority expressly set forth herein. The Owner's representative shall have the authority to bind the Owner only in the following particulars:

- .1 contacting and coordinating the location of existing lines, cables, pipes, and pipelines belonging to private and public utilities;
- .2 approval of any construction directives regarding construction means and methods;
- .3 approval of any extensions of time; and
- .4 approval of field changes not requiring a Modification.

8. Section 1.4.9 is hereby amended by deleting the second sentence of said Section and replacing it with the following sentence:

To the extent required by Texas law, any Consultant providing professional services for the Design-Builder shall be lawfully licensed to provide the required professional services.

9. Section 1.4.10 is hereby amended by replacing the phrase "applicable jurisdiction" with the phrase "State of Texas."

10. Section 1.4.11 is hereby amended by replacing the phrase "jurisdiction where the Project is located" with the phrase "State of Texas."

11. Section 2.1.3.1 is hereby amended by deleting Subsection .1 in its entirety and replacing it with a new Subsection .1 to read as follows:

.1 Local transportation based upon actual vehicle miles traveled related specifically to the performance of tasks authorized by the Owner at the then effective vehicle mile rate established by the United States Internal Revenue Service;

12. Section 2.1.3.1 is hereby amended by deleting Subsections .4, .8, and .9 in their entirety.

13. Section 2.1.3.1 is hereby amended by deleting Subsections .6 and .7 in their entirety and replacing said Subsections with a new Subsection .6 and .7 to read as follows:

.6 Expense of overtime work requiring higher than regular rates, if authorized in advance in writing by the Owner; and

.7 Physical models and mock-ups requested in writing by the Owner.

*[Remainder of page intentionally left blank.]*

14. Section 2.1.4.1 is hereby amended by deleting Section 2.1.4.1 in its entirety and replacing it with a new Section 2.1.4.1 to read as follows:

**§ 2.1.4.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts that are not disputed and which remain unpaid more than thirty (30) days after the invoice date shall bear interest at a rate not to exceed the rate of interest set out in the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

15. Section 2.2 is hereby amended by deleting Section 2.2 in its entirety and replacing it with a new Section 2.2 to read as follows:

**§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment.** For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay the Design-Builder as agreed in the Design-Build Amendment and Article 9 of this Agreement.

16. Section 3.1.1 is hereby amended by deleting Section 3.1.1 in its entirety and replacing it with a new Section 3.1.1 to read as follows:

**§ 3.1.1** The Design-Builder shall comply with any applicable permitting and licensing requirements in the City of Joshua, Johnson County, Texas.

17. Section 3.1.3.1 is hereby amended by replacing the word “correction” at the end of said Section with the phrase “any such violation as well as the cost to correct the violative Work.”

18. Section 3.1.3.2 is hereby amended by deleting the last sentence of Section 3.1.3.2 and replacing said sentence with a new sentence to read as follows:

Upon verification by the Owner that a material change to the Owner’s Criteria is required to remedy the violation, the Owner and the Design-Builder may execute a Modification in accordance with Article 6 to address any increase or decrease in the Work caused by such change, if any.

19. Section 3.1.6 is hereby amended by adding a new provision to the end of the existing Section to read as follows:

The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner’s written request.

20. Section 3.1.7 is hereby amended by deleting the phrase “, with the assistance of the Owner,”.

21. Sections 3.1.9.1 and 3.1.9.2 are hereby amended by deleting Sections 3.1.9.1 and 3.1.9.2 in their entirety and replacing them with new Sections 3.1.9.1 and 3.1.9.2 to read as follows:

**§ 3.1.9.1** The Design-Builder, promptly after being awarded the Contract, shall prepare and submit for the Owner’s information a Design-Builder’s initial construction schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Design-Build Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a

condition precedent to the Owner's duty to make any payment pursuant to Article 9.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Design-Builder and Owner.

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Owner is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

.4 If any updated schedule exceeds the time limits set forth in the Design-Build Documents for completion of the Work, the Design-Builder shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Design-Builder's planned course of action for completing the Work within the time limits set forth in the Design-Build Documents. If the Design-Builder asserts that the failure of the Owner to provide information to the Design-Builder is the reason for anticipated delay in completion, the Design-Builder shall also specify what information is required from the Owner.

.5 Neither the Owner nor the Design-Builder shall have exclusive ownership of float time in the schedule. All float time shall inure to the benefit of the Project. The Design-Builder agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the Design-Builder that: (1) the schedule represents the sequence in which the Design-Builder intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed work; (3) that to the best of its knowledge and belief the Design-Builder

is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Design-Builder intends to complete the remaining work in the sequence and time indicated.

**§ 3.1.9.2** The construction schedule shall be in a detailed precedence - style critical path method ("CPM") format for each major item of work and the time frame for the initiation, progress and completion of such major item of work satisfactory to the Owner. The construction schedule shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner of the Milestone Dates, the construction schedule shall be deemed part of the Design-Build Documents and attached to the Agreement as Exhibit C. If not accepted, the construction schedule shall be promptly revised by the Design-Builder in accordance with the recommendations of the Owner and resubmitted for acceptance. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays to the critical path of the construction schedule, the Design-Builder shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

22. Section 3.1.9 is hereby further amended by adding new Sections 3.1.9.3, 3.1.9.4, and 3.1.9.5 to read as follows:

**§ 3.1.9.3** In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Design-Build Documents, the Owner shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction, including,

without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Design-Build Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Design-Builder's compliance with the construction schedule.

.1 The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.1.9.3.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.1.9.3 as frequently as the Owner deems necessary to ensure that the Design-Builder's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.1.9.4 If reasonably required by Owner, Design-Builder shall also prepare and furnish project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

23. Section 3.1.12 is hereby amended by deleting Section 3.1.12 in its entirety and replacing it with a new Section 3.1.12 to read as follows:

### **§ 3.1.12 WARRANTY**

§ 3.1.12.1 The Design-Builder warrants to the Owner that the materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work the Design-Build Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions that are not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse attributable to Owner; alterations or modifications to the Work



not performed by Design-Builder; improper or insufficient maintenance and/or improper operation attributable to Owner; or, normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.1.12.2** The Design-Builder agrees to assign to the Owner at the time of final completion of the Work 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.

**§ 3.1.12.3** Design-Builder's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

**§ 3.1.12.4** The warranty provided in Section 3.1.12.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Design-Build Documents, and such warranty shall be interpreted to require Design-Builder to replace defective materials and equipment and re-execute defective Work which is disclosed to the Design-Builder by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

**§ 3.1.12.5** The Design-Builder shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.1.12.1 and 3.1.12.2 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

**§ 3.1.12.6** Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Owner acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of Substantial Completion or Final Completion. Design-Builder shall maintain a complete and accurate schedule of

the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion Prior to termination of the one (1) year warranty period, Design-Builder shall accompany the Owner on re-inspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. For extended warranties required by various sections, *i.e.*, roofing, compressors, mechanical equipment, Owner will notify the Design-Builder of deficiencies and Design-Builder shall start remedying these defects within three (3) business days of initial notification from Owner. Design-Builder shall prosecute the work without interruption until accepted by the Owner, even though such prosecution should extend beyond the limit of the warranty period.

**§ 3.1.12.7** Warranties shall become effective on a date established by the Owner in accordance with the Design-Build Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for work to be completed or corrected after the date of Substantial Completion and prior to final payment.

24. Section 3.1.13.1 is hereby amended by deleting Section 3.1.13.1 in its entirety and replacing it with a new Section 3.1.13.1 to read as follows:

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees associated with any and all designs, processes or products that are used in the Project or which are required by the Owner's Criteria. The Design-Builder shall promptly inform Owner of any designs, processes or products for which the Design-Builder has not been able to obtain the rights of use thereof, and explain the impact of such unavailability to Owner and the need, if any, for a change in the requirements for the Project and/or the Owner's Criteria.

25. Section 3.1.13.2 is hereby amended by deleting Section 3.1.13.2 in its entirety and replacing it with a new Section 3.1.13.2 to read as follows:

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for

such defense or loss when the Design-Builder has informed the Owner that it has not obtained the right to use the design, process or product in accordance with Section 3.1.13.1, and the Owner insists on using such design, process or product of a particular manufacturer or manufacturers notwithstanding the absence of the right to so use such design, process or product. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

26. Section 3.1.14.1 is hereby amended by deleting Section 3.1.14.1 in its entirety and replacing it with a new Section 3.1.14.1 to read as follows:

**§ 3.1.14.1(A) TO THE FULLEST EXTENT ALLOWED BY LAW, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE § 130.002(B), DESIGN-BUILDER DOES HEREBY AGREE TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY OF JOSHUA (OWNER) AND ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY CAUSED BY THE WRONGFUL INTENTIONAL ACT, ERROR, OMISSION, OR NEGLIGENT ACT OF DESIGN-BUILDER, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUB-SUBCONTRACTORS, INVITEES OR ANY OTHER PERSONS IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT.**

**§ 3.1.14.1(B) TO THE FULLEST EXTENT ALLOWED BY LAW, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE § 130.002(B), DESIGN-**

**BUILDER DOES HEREBY AGREE TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS CITY OF JOSHUA (OWNER) AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION, AND LIABILITY OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY'S FEES FOR INJURY OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGES TO, OR LOSS OF USE OF ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT THAT ARISE IN WHOLE OR IN PART FROM THE ACTIONS OF THE CITY OF JOSHUA (OWNER), ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES; HOWEVER, THE PARTIES ACKNOWLEDGE THAT THE CITY OF JOSHUA'S GROSS NEGLIGENCE, OR WRONGFUL OR INTENTIONAL CONDUCT MAY NOT BE SUBJECT TO ANY INDEMNITY PROVISION HEREIN. THE PARTIES HERETO AGREE AND ACKNOWLEDGE THAT CERTAIN INDEMNITY CLAIMS MAY BE COVERED BY OR SUBJECT TO INSURANCE COVERAGE PROCURED BY DESIGN/BUILDER.**

27. Section 3.1.14.2 is hereby amended by deleting Section 3.1.14.2 in its entirety and replacing it with a new Section 3.1.14.2 to read as follows:

**§ 3.1.14.2 EXCEPT FOR THE OBLIGATIONS DESCRIBED IN SECTION 3.1.14.1(b) THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE DESIGN-BUILDER, ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR UNDER WORKERS' COMPENSATION OR ANY OTHER DISABILITY BENEFITS ACT OR EMPLOYEE BENEFIT ACTS.**

28. Section 3.1.14 is also hereby amended by adding a new Section 3.1.14.4 to read as follows:

**§ 3.1.14.4 INDEMNIFICATION HEREUNDER SHALL INCLUDE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LIABILITY WHICH COULD ARISE TO THE OWNER, ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES PURSUANT TO STATE STATUTES FOR**

**THE SAFETY OF WORKMEN AND IN ADDITION, ALL FEDERAL STATUTES AND RULES EXISTING THEREUNDER FOR PROTECTION, OCCUPATIONAL SAFETY AND HEALTH TO WORKMEN, IT BEING AGREED THAT THE PRIMARY OBLIGATION OF THE DESIGN-BUILDER IS TO COMPLY WITH SAID STATUTES IN PERFORMANCE OF THE WORK BY DESIGN-BUILDER AND THAT THE OBLIGATIONS OF THE OWNER, ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES UNDER SAID STATUTES ARE SECONDARY TO THAT OF THE DESIGN-BUILDER.**

29. Section 3.1.14 is also hereby amended by adding a new Section 3.1.14.5 to read as follows:

**§ 3.1.14.5 LIKEWISE, OWNER SHALL TO THE FULLEST EXTENT ALLOWED BY LAW REQUIRE ANY OTHER CONTRACTORS OR CONSULTANTS WITH WHICH THE CITY OF JOSHUA (OWNER) CONTRACTS TO PERFORM WORK ON OR IN CONJUNCTION WITH THE PROJECT THAT IS THE SUBJECT OF THIS CONTRACT TO PROVIDE THE CITY OF JOSHUA (OWNER) AND ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES WITH SIMILAR INDEMNIFICATION OBLIGATIONS THAT ARE SET OUT IN THIS CONTRACT WITH THE DESIGN-BUILDER.**

30. Section 4.3.1 is hereby amended by deleting the last sentence of said Section and replacing it with a new sentence to read as follows:

Subject to the advance written consent of the Owner, the Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

31. Section 4.3.1 is hereby amended by inserting the following provision at the end of the existing text to read as follows:

Execution of the Design-Build Amendment shall constitute a modification of the Owner's Criteria consistent with the Design-Builder's Proposal save and except to the extent only that the Design-Build Amendment specifically rejects any of the clarifications, assumptions and/or deviations to the Owner's Criteria set out in the Design-Builder's Proposal.

32. Section 5.2.1 is hereby amended by inserting the following provision at the end of the existing text to read as follows:

In addition, the Design-Builder shall perform no part of the Work for which the Design-Build Documents require the Owner's review of Submittals, such as Shop Drawings, Product Data and Samples until the Owner has approved each submittal.

33. Section 5.3.1 is hereby amended by adding a new Section 5.3.1.1 to read as follows:

**§ 5.3.1.1 Prevailing Wages.** Attention is called to Texas Government Code Chapter 2258, entitled "Prevailing Wage Rates." Among other things, this Article provides that it shall be mandatory upon the Design-Builder and upon any Subcontractor under the Design-Builder 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.

34. Section 5.3.1 is hereby amended by adding a new Section 5.3.1.2 to read as follows:

**§ 5.3.1.2** In accordance with Texas Government Code Chapter 2258, the Owner has established a scale of prevailing wages which is incorporated in the project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

35. Section 5.3.1 is also hereby amended by adding a new Section 5.3.1.3 to read as follows:

**§ 5.3.1.3** A Design-Builder or Subcontractor who violates the provisions of Sections 5.3.1.1 or 5.3.1.2 shall pay to Owner the sum of Sixty and No/100 Dollars (\$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 § 2258.023(b).

36. Section 5.3.3 is hereby amended by adding the following provisions to the end of Section 5.3.3 to read as follows:

The Design-Builder shall be responsible for the actions of Design-Builder's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Design-Builder recognizes

that the Project Site is public municipal property, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Design-Builder's forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the Design-Builder or employees or invitees of the Owner by employees of the Design-Builder is strictly forbidden. Any employee of the Design-Builder who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Design-Builder, including removal from the job site.

37. Section 5.3.3 is hereby amended by adding a new Section 5.3.3.1 to read as follows:

**§ 5.3.3.1** The Design-Builder shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

38. Section 5.4 is hereby amended by deleting Section 5.4 in its entirety and replacing it with a new Section 5.4 to read as follows:

**§ 5.4 TAXES.** Owner is a governmental entity, to-wit: a Texas municipal corporation, which is exempted from paying sales and use taxes pursuant to Texas Tax Code § 151.309(5). Design-Builder will not include in the Contract Price or any Modification any amount for sales, use, or similar taxes from which the Owner is exempt by and through Texas Tax Code § 151.309(5). Owner will provide the Design-Builder with a Texas Sales and Use Tax Resale Certificate or other documentation necessary to establish the Owner's exemption from such taxes.

39. Section 5.5.1 is hereby amended by deleting Section 5.5.1 in its entirety and replacing it with a new Section 5.5.1 to read as follows:

**§ 5.5.1** Unless otherwise specifically provided to the contrary in the Design-Build Documents, it shall be the full responsibility of the Design-Builder to acquire and comply with any and all permits as may be required to avoid delay of the Project, and which permits, fees, licenses and inspections are necessary for the proper execution, performance and completion of the Work.

40. Section 5.5.2 is hereby amended by adding the following provisions to the end of Section 5.5.2 to read as follows:

The Design-Builder shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Design-Build Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the Work including, but not limited to, the work eligibility of individuals performing the Work. This provision applies whether or not a legal requirement is described or referred to in the Design-Build Documents.

41. Section 5.5.3 is hereby amended by deleting the first sentence in Section 5.5.3 and replacing the first sentence with a new sentence to read as follows:

If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents 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 Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and within no more than seven business days after first observation of the conditions.

42. Section 5.7.1 is hereby amended by adding new Sections 5.7.1.1 through 5.7.1.4 to read as follows:

**§ 5.7.1.1** The Design-Builder shall furnish a list to the Owner of all engineers, consultants, job-site superintendents, Subcontractors, Sub-subcontractors and material and equipment suppliers involved in construction of the Work.

**§ 5.7.1.2** The Owner may, on a reasonable basis reject or require removal of any engineer, consultant, job superintendent, or employee of the Design-Builder, Subcontractor or Sub-subcontractor involved in the project.

**§ 5.7.1.3** Design-Builder shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Design-Builder to dismiss from the work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any



provision in these Design-Build Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

**§ 5.7.1.4** The Owner reserves the right to utilize one or more of its employees to function in the capacity of the City's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

43. Section 5.7.2 is hereby amended by deleting the last sentence of Section 5.7.2 and replacing it with another sentence to read as follows:

Failure of the Owner to reply within the 14-day period shall constitute notice that the Owner has no known objection to the proposed personnel. Failure to reply or affirmative consent by the Owner to the proposed personnel shall not be deemed to waive or otherwise deprive the Owner of the right to thereafter complain to the Design-Builder regarding or otherwise object to the continued assignment of the personnel to the Work if a reasonable objection to the personnel arises during the course of the Work.

44. Section 5.7.3 is hereby amended by deleting the last sentence of Section 5.7.3 and replacing it with the following provision to read as follows:

Failure of the Owner to reply within the 14-day period shall constitute notice that the Owner has no known objection to the proposed personnel. Failure to reply or affirmative consent by the Owner to the proposed personnel shall not be deemed to waive or otherwise deprive the Owner of the right to thereafter complain to the Design-Builder regarding or otherwise object to the continued assignment of the personnel to the Work if a reasonable objection to the personnel arises during the course of the Work.

45. Section 5.7 is hereby amended by adding new Sections 5.7.4 and 5.7.4.1 to read as follows:

**§ 5.7.4** The Design-Builder 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 Design-Builder, and communications given to the superintendent shall be as binding as if given to the Design-Builder. The superintendent shall be capable of reading and thoroughly understanding the

Plans and Specifications, and thoroughly experienced in the type of Work being performed.

**§ 5.7.4.1** The Design-Builder shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection. The Design-Builder shall not replace the superintendent prior to final completion of the Work unless (1) the superintendent shall cease to be employed by the Design-Builder or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The superintendent may not be employed on any other project of the Design-Builder prior to final completion of the Work.

46. Section 5.8 is hereby amended by numbering the paragraph immediately following the line "**§ 5.8 Documents and Submittals at the Site**" as "§ 5.8.1."

47. Section 5.8 is also hereby amended by adding a new Section 5.8.2 and a new Section 5.8.3 to read as follows:

**§ 5.8.2** Design-Builder 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 at the site. Design-Builder shall make such reports and records available to inspection by the Owner and Owner's agents, within five (5) working days of request by Owner or Owner's agents.

**§ 5.8.3** Design-Builder shall at all times have access, from the site, to all applicable building codes, reference standards, installation instructions and other documents referenced by the Design-Build Documents or otherwise applicable and/or necessary to the performance of the Work. In addition, current drawings, specifications, and submittals (including installation and warranty documents) shall be available to the Owner and Owner's agents during any site visits and construction meetings.

48. Section 5.9 is hereby amended by numbering the paragraph immediately following the line "**§ 5.9 Use of Site**" as Section 5.9.1.

49. Section 5.9 is also hereby amended by adding a new Section 5.9.2 to read as follows:

**§ 5.9.2** The Design-Builder will abide by all applicable rules and regulations of the Owner with respect to conduct,

including smoking, parking of vehicles and entry into adjacent facilities owned by Owner.

50. Section 5.11.1 is hereby amended by adding the following provisions to the end of Section 5.11.1 to read as follows:

Design-Builder shall thoroughly wash and clean all glass and mirror surfaces, and shall leave the Work neat and clean. The Design-Builder shall, not less than two times each week, clean up after his operation, by removing rubbish, including old and surplus materials.

51. Section 5.11.2 is hereby amended by deleting Section 5.11.2 in its entirety and replacing it with a new Section 5.11.2 to read as follows:

**§ 5.11.2** If the Design-Builder fails to clean up as required by the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

52. Section 5.11 is hereby amended by adding a new Section 5.11.3 to read as follows:

**§ 5.11.3** The Design-Builder shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

53. Section 5.13.1.1 is hereby amended by deleting the phrase “, including those terms and conditions related to insurance and waiver of subrogation” from the first sentence of said Section.

54. Section 5.13.1.4 is hereby amended by deleting Section 5.13.1.4 in its entirety and replacing it with a new Section 5.13.1.4 to read as follows:

**§ 5.13.1.4** Owner will not perform construction or operations related to the Project with Owner’s own forces or any forces other than Design-Builder during the term of this Agreement save and except only to the extent specifically called for to the contrary by the Design-Build Documents or upon Design-Builder’s default and termination as provided in the Design-Build Documents.

55. Section 6.2 is hereby amended by adding a new paragraph to the end of Section 6.2.2 to read as follows:

Acceptance of a Change Order by the Design-Builder shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact,

delay or acceleration damages, arising from the subject matter of the Change Order save and except Owner's breach or violation of any such Change Order, other than those claims reserved by Design/Builder in writing at the time of the execution of said change order.

56. Section 6.3.8 is hereby amended by deleting the first sentence of Section 6.3.8 and replacing it with another sentence to read as follows:

The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost plus the Design-Builder's allocated percent for profit and overhead as confirmed by the Owner, subject to equitable adjustment agreed upon by the Design-Builder and the Owner, and approved by the Owner.

57. Section 7.1.1 is hereby amended by deleting Section 7.1.1 in its entirety and replacing it with a new Section 7.1.1 to read as follows:

**§ 7.1.1** The Owner is the City of Joshua, Texas, and is referred to throughout the Design-Build Documents as if singular in number. The Owner hereby designates Mike Peacock, City Manager, to represent the Owner. The Owner's representative shall have no implied authority beyond the scope of authority expressly set forth herein. The Owner's representative shall have the authority to bind the Owner only in the following particulars:

.1 contacting and coordinating the location of existing lines, cables, pipes, and pipelines belonging to private and public utilities;

.2 approval of any construction directives regarding construction means and methods;

.3 approval of any extensions of time; and

.4 approval of field changes not requiring a Change Order.

58. Section 7.1.2 is hereby amended by deleting Section 7.1.2 in its entirety and replacing it with a new Section 7.1.2 to read as follows:

**§ 7.1.2** Design-Builder acknowledges that no lien rights exist with respect to public property.

59. Section 7.2.6 is hereby amended by adding a new sentence to the end of Section 7.2.6 to read as follows:

Owner's failure to observe or become aware of any fault or to provide notice to the Design-Builder of any suspected fault or defect in the Work shall not relieve the Design-Builder of its responsibility to properly perform the Work.

60. Section 7.2.10 is hereby amended by deleting said provision in its entirety.

61. Section 7.8 is hereby amended by deleting Section 7.8 in its entirety and replacing it with a new Section 7.8 to read as follows:

**§ 7.8** If the Design-Builder fails to correct nonconforming or defective Work as required by Section 11.2, or fails to complete the Work on time as required by the Design-Build Documents or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Design-Builder 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 any duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's rights under Article 11.

62. Section 7.9 is hereby amended by replacing the phrase "ten-day" with the phrase "seven-day" the first sentence of said Section.

63. Section 9.3.3 is hereby amended by adding the following sentence to the end of Section 9.3.3 to read as follows:

**DESIGN-BUILDER SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE DESIGN-BUILDER, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE DESIGN-BUILDER OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO DESIGN-BUILDER.**

64. Section 9.3 is hereby amended by adding a new Section 9.3.4 to read as follows:

**§ 9.3.4** In each Request for Payment, Design-Builder shall certify that there are no known mechanics' or materialmens'

liens outstanding at the date of the requisition, that all due and payable bills with respect to the Work, other than bills where Design/Builder has a bona-fide dispute and where Design//Builder identified the bona-fide dispute, the basis for the same, the amount in dispute and the identity of the payee with the Design/Builder has a bona-fire dispute have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work, and that releases from all subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Design-Builder.

65. Section 9.5.2 is hereby amended by adding the following sentence to the end of Section 9.5.2 to read as follows:

The Owner shall not be deemed in default by reason of withholding payment as provided for herein and in compliance with Section 9.5.1.

66. Section 9.6.2 is hereby amended by deleting Section 9.6.2 in its entirety and replacing it with a new Section 9.6.2 to read as follows:

**§ 9.6.2** The Design-Builder shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Design-Builder's failure to make payments within such time shall constitute a material breach of this Contract. Design-Builder shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Design-Builder hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Design-Builder has failed to make payment promptly to the Design-Builder's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Design-Builder, unless Design/Builder has a bona-fide dispute and where Design/Builder identified the bona-fide dispute, the basis for same, the amount in dispute and the identity of the payee with which Design/Builder has a bona-fide dispute, the

Owner shall be entitled to withhold payment to the Design-Builder in part or in whole to the extent necessary to protect the Owner.

67. Section 9.6.7 is hereby amended by deleting Section 9.6.7 in its entirety and replacing it with a new Section 9.6.7 to read as follows:

**§ 9.6.7** The Design-Builder shall, as a condition precedent to any obligation of the Owner under this agreement, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

68. Section 9.8.1 is hereby amended by adding the following provision to the end of Section 9.8.1 to read as follows:

In the event substantial completion is not achieved by the designated date, or as it may be extended (the "Substantial Completion Date"), Owner may withhold payment of any further sums due until substantial completion is achieved.

In addition, Owner shall also be entitled to deduct out of any sums due to Design-Builder any or all liquidated damages due Owner. In this regard, Design-Builder understands and agrees that time is of the essence in performing and completing the Work. The Owner and Design-Builder acknowledge that the actual damages the Owner may sustain if the Design-Builder fails to complete the Work on time are uncertain and will be difficult to ascertain. Consequently, the Design-Builder agrees to pay to the Owner the sum of Seven Hundred Fifty Dollars per day after a 30 day grace period beyond Substantial Completion. for each calendar day that completion of any Work required under the Design-Build Documents is overdue from the Substantial Completion Date until the date substantial completion is attained. This amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

69. Section 9.9.3 is hereby amended by deleting Section 9.9.3 in its entirety and replacing it with a new Section 9.9.3 to read as follows:

**§ 9.9.3** Unless expressly agreed upon in writing, 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.

70. Section 9.10.1 is hereby amended by deleting Section 9.10.1 in its entirety and replacing it with a new Section 9.10.1 to read as follows:

**§ 9.10.1** When all of the Work is finally completed and the Design-Builder is ready for a final inspection it shall notify the Owner thereof in writing. Thereupon, the Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Owner will promptly issue a final Certificate for Payment certifying that the Project is complete and the Design-Builder is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract.

71. Section 9.10.2 is hereby amended by deleting Section 9.10.2 in its entirety and replacing it with a new Section 9.10.2 to read as follows:

**§ 9.10.2** The Design-Builder shall not be entitled to final payment unless and until it submits to the Owner its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied, or is the subject of a bona-fide dispute where Design/Builder identified the bona-fide dispute, the basis for same, the amount in dispute and the identity of the payee with which Design/Builder has a bona-fide dispute to Owner in writing, releases and waivers of liens from all Subcontractors of the Design-Builder and of any and all other parties required by the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Design-Builder shall furnish a bond satisfactory to the Owner to discharge any such lien and/or indemnify the Owner from liability. Section 9.10.4 is hereby amended by deleting Section 9.10.4 in its entirety and replacing it with a new Section 9.10.4 to read as follows:

**§ 9.10.4** The Owner shall make final payment of all sums due the Design-Builder not more than thirty (30) days after the Owner's execution of a final Certificate for Payment.

72. Section 9.11 is hereby created by adopting and adding the following Section 9.11 to read as follows:



**§ 9.11 Audit.** Design-Builder agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Design-Builder agrees to retain all such books, payrolls and records (including data stored in computers) for a period of not less than three (3) years after completion of the Work. At all reasonable times during the performance of the Work, Owner and its duly authorized representatives shall have access to all personnel of Design-Builder and all such books, payrolls and records, and shall have the right to audit same. After completion of the Work, Owner shall continue to have the right to audit all such books, payrolls and records upon providing Design-Builder at least three (3) days written notice of Owner's intent to perform such an audit.

73. Section 10.1 is hereby amended by numbering the paragraph immediately following the line "**§ 10.1 Safety Precautions and Programs**" as Section 10.1.1.

74. Section 10.1 is also hereby amended by adding a new Section 10.1.2 to read as follows:

**§ 10.1.2** Design-Builder's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Design-Builder, its employees, agents, Subcontractors and Sub-subcontractors, and their respective employees and agents shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Design-Builder, its employees, agents, Subcontractors and Sub-subcontractors, and their respective employees and agents shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

Design-Builder has adopted or will adopt its own policy to assure a drug and alcohol-free workplace while performing the Work.

Design-Builder will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Design-Builder to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Design-Builder's employees may

only be considered for return to work after the Design-Builder certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this Contract. Design-Builder will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

Design-Builder will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

75. Section 10.3.2 is hereby amended by deleting Section 10.3.2 in its entirety and replacing it with a new Section 10.3.2 to read as follows:

**§ 10.3.2** Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory, sanitarian or other professional to verify the presence or absence of the suspected hazardous material or substance reported by the Design-Builder. In the event a hazardous material or substance is found to be present the Owner may (1) terminate the Work without any penalty or liability to Design-Builder or (2) suspend the Work for such time period as may be required to retain and contract with one or more third-party consultants and contractors to develop a plan to address and perform all work necessary to contain, encase, remove or remediate the hazardous material or substance as may be appropriate and recommended by a licensed laboratory, sanitarian or other professional in conformity with state and federal law. When the hazardous material or substance has been contained, encased, removed or remediated in conformity with state and federal law, Work in the suspect area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately. The Contract Sum may be adjusted upon agreement of the parties to address Design-Builder's actual costs of shut-down and start-up provided that the Work is stopped or abated for more than seven (7) business days.

If Owner terminates the Work as a result of finding a hazardous material or substance as provided herein-above, Design-Builder will be entitled to receive payment for Work

completed and approved as being performed in accordance with the Design-Build Documents until the date of such termination. Design-Builder will also be entitled to receive payment for costs incurred by Design-Builder by reason of such termination excluding overhead and profit on Work not executed and/or approved as being performed in accordance with the Design-Build Documents. Any payment under this paragraph will be conditioned upon submission and processing of a payment application in strict compliance with the Design-Build Documents, and the submission of any and all documentation in Design-Builder's possession or control as might be required for the closing out of the Project upon its final completion such as manuals, warranties, as-builts, releases, and any other similar documentation, which might allow Owner to solicit proposals or bids for the completion of the Project at some date in the future upon the final remediation of any such hazardous material or substance.

76. Section 10.3.3 is hereby deleted in its entirety.

77. Section 10.3.5 is hereby amended by deleting Section 10.3.5 in its entirety and replacing it with a new Section 10.3.5 to read as follows:

**§ 10.3.5 THE DESIGN-BUILDER SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A HAZARDOUS MATERIAL OR SUBSTANCE THE DESIGN-BUILDER BRINGS TO THE SITE AND WRONGFULLY OR NEGLIGENTLY STORES, USES OR HANDLES, (2) FOR REMEDIATION OF A HAZARDOUS MATERIAL OR SUBSTANCE THE DESIGN-BUILDER WRONGFULLY OR NEGLIGENTLY RELEASES INTO THE ENVIRONMENT, (3) WHERE THE DESIGN-BUILDER FAILS TO PERFORM ITS OBLIGATIONS UNDER SECTION 10.3.1, (4) FOR THE COST OF ANY CITATIONS, COURT COSTS, ATTORNEY'S FEES AND EXPERT WITNESS FEES ARISING OUT OF ANY CLAIMS OR LITIGATION INVOLVING ANY SUCH HAZARDOUS MATERIAL OR SUBSTANCE, AND (5) FOR ANY CONTINUING COSTS ASSOCIATED WITH MONITORING AND REPORTING REQUIRED BY THE ENVIRONMENTAL POLLUTION AGENCY, TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND/OR THE TEXAS STATE DEPARTMENT OF HEALTH.**

78. Section 10.3.6 is hereby amended by deleting Section 10.3.6 in its entirety.

79. Section 10.4 is hereby amended by deleting Section 10.4 in its entirety and replacing it with a new Section 10.4 to read as follows:

**§ 10.4 Emergencies.** In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency may be considered as provided in Article 6 and Article 14. It is specifically understood and agreed that Owner shall have no liability or responsibility for any emergency to the extent the emergency is caused by any act or omission of Design-Builder and/or Design-Builder's contractors, suppliers, and/or any other person(s) or party(ies) for whom Design-Builder or its contractors or suppliers may be legally responsible.

80. Section 11.1 is hereby amended by deleting the third sentence of Section 11.1 and replacing it with a new sentence to read as follows:

If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor employed directly by Owner in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

81. Section 11.2.2.3 is hereby amended by deleting Section 11.2.2.3 in its entirety and replacing it with a new Section 11.2.2.3 to read as follows:

**§ 11.2.2.3** The one-year period for correction of Work shall be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

82. Section 11.2 is hereby further amended by adding a new Section 11.2.7 to read as follows:

**§ 11.2.7** The provisions of this Section 11.2 apply to Work done by subcontractors of the Design-Builder as well as work done directly by employees of the Design-Builder. The provisions of this Section 11.2.7 shall not apply to corrective work attributable to the acts or omissions of any separate Design-Builder or contractor of Owner (unless Design-Builder is acting in such capacities). The cost to Design-Builder of performing any of its obligations under this Section 11.2.7 to

the extent not covered by insurance shall be borne by Design-Builder.

83. Section 11.2 is also hereby amended by adding a new Section 11.2.8 to read as follows:

**§ 11.2.8** If, however, Owner and Design-Builder deem it inexpedient to require the correction of work damaged or not done in accordance with the Design-Build Documents, an equitable deduction, as determined by the Architect, from the Contract Sum and the Stipulated Sum shall be made by agreement between Design-Builder and Owner.

84. Section 11.2 is hereby further amended by adding a new Section 11.2.9 to read as follows:

**§11.2.9** Design-Builder's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

85. Sections 12.1, 12.2, 12.3, and 12.3.1, and 12.3.2 are hereby deleted in their entirety and replaced with the following provision to be designated as Section 12.1:

**§ 12.1** All materials, documents and "Instruments of Service" prepared or assembled by the Design-Builder and Design-Builder's consultants under this Agreement shall become the sole property of the Owner and shall be delivered to the Owner without restriction on future use. The Design-Builder and Design-Builder's consultants may retain in their files copies of all drawings, specifications and other pertinent information for the work. The Design-Builder and Design-Builder's consultants shall have no liability for changes made to any materials or other documents by others subsequent to the completion of this Agreement.

86. Section 13.1, entitled "Termination or Suspension Prior to Execution of the Design-Build Amendment," including all Subsections thereof is hereby deleted in its entirety and replaced with a new Section 13.1 also entitled "Termination or Suspension Prior to Execution of the Design-Build Amendment" to read as follows:

**§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment**

**§ 13.1.1** Prior to execution by both parties of the Design-Build Amendment, the Owner may terminate this agreement, with

or without cause, at any time upon twenty-four hours' written notice. In the event such termination is for the convenience of the Owner, the Design-Builder shall be compensated for all services actually performed prior to receipt of notice of termination, not to exceed the compensation set forth in Section 2.1.1.

**§ 13.1.2** Following execution by both parties of the Design-Build Amendment, the Owner may terminate this agreement, with or without cause, at any time. In the event such termination is for the convenience of the Owner, the Design-Builder shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion of the work actually performed prior to termination, and reasonable demobilization costs.

**§ 13.1.3** Following execution by both parties of the Design-Build Amendment, if the Project work is stopped for a period of ninety days through no act or fault of the Design-Builder, then the Design-Builder may, upon ten additional days written notice to the Owner, terminate this agreement and recover from the Owner payment for all work actually performed, for any loss sustained upon any materials, equipment, tools, equipment, and machinery, and profits on only that portion of the work actually performed prior to termination. If the cause of the work stoppage is removed prior to the end of the ten-day notice period, the Design-Builder may not terminate this agreement.

**§ 13.1.4** The Owner or the Design-Builder may terminate this agreement for cause as provided in Article 14 of this Agreement.

87. Subsection 13.2.1.1.2 is hereby amended by inserting the word "or" at the end of the current line.

88. Subsection 13.2.1.1.3 is hereby amended by deleting ": or" at the end of the current line and inserting a period (.).

89. Section 13.2.1.3 is hereby amended by deleting Section 13.2.1.3 in its entirety and replacing it with a new Section 13.2.1.3 to read as follows:

**§ 13.2.1.3** If one of the reasons described in Subparagraph 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven (7) days written notice to the Owner, terminate the Contract and recover from the Owner payment in an amount

which would have been recoverable had the termination been for the Owner's convenience.

90. Section 13.2.2.2 is hereby amended by deleting Section 13.2.2.2 in its entirety and replacing it with a new Section 13.2.2.2 to read as follows:

**§ 13.2.2.2** 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 Design-Builder and the Design-Builder's Surety, if any, seven (7) days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of Surety:

.1 take possession of the site and of all materials, equipment, tools, and construction equipment, and machinery thereof owned by the Design-Builder.

.2 accept assignment of the Architect, Consultant and Contractor pursuant to Section 3.1.15.

.3 finish the Work by whatever reasonable method the Owner may deem expedient.

91. Section 13.2.4.3 is hereby amended by deleting Section 13.2.4.3 in its entirety and replacing it with a new Section 13.2.4.3 to read as follows:

**§ 13.2.4.3** In the case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, for profits only on that portion of the Work executed, and for reasonable costs of demobilization.

92. Section 14.1.2 is hereby amended by deleting Section 14.1.2 in its entirety and replacing it with a new Section 14.1.2 to read as follows:

**§ 14.1.2 Time Limits on Claims.** Design-Builder shall provide Owner written notice of any and all claims and causes of action within 21 days after occurrence of the event giving rise to such claim or within 21 days after the Design-Builder first discovers the condition giving rise to such claim or cause of action, whichever is later, whether in contract, tort or otherwise, against the Owner arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3. and as provided by this Article 14.

93. Section 14.1.3.1 is hereby amended by deleting Section 14.1.3.1 in its entirety and replacing it with a new Section 14.1.3.1 to read as follows:

**§ 14.1.3.1 Prior To Final Payment.** Prior to the date of Final Payment, any Claims by either Party to this Agreement must be initiated by written notice to the Owner within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Design-Builder first recognizes the condition giving rise to the Claim, whichever is later.

94. Section 14.1.3.2 is hereby amended by deleting Section 14.1.3.2 in its entirety and replacing it with a new Section 14.1.3.2 to read as follows:

**§ 14.1.3.2 Claims Arising After Final Payment.** After the date of Final Payment, any Claims by the Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the Owner. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

95. Section 14.1.6.2 is hereby amended by deleting Section 14.1.6.2 in its entirety and replacing it with a new Section 14.1.6.2 to read as follows:

**§ 14.1.6.2** The Design-Builder shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site, as determined from climatological data set forth in this Section. The Design-Builder shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions.

Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rainy days within the month exceed the historical cumulative average number of rainy days for said month, provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical number of Weather Days per calendar month is as follows, based upon regional weather data from the National Weather Service (Dallas /Fort Worth, TX Weather Forecast Office):



## Average Rain Days per Month

Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.
8	7	8	7	9	7	4	5	6	7	7	7

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement. Time extensions may also be granted for any day following a period of precipitation during which muddy conditions exist and prevent performance of major items of work conducted on normal working days, which muddy conditions are subject to confirmation by the Owner.

Requests for an extension of time pursuant to this subsection shall be promptly submitted to the Owner and no later than fourteen (14) days after the event(s) giving rise to such claim. The notice shall, in writing, specify the nature and duration of the delays or disruptions and the anticipated effect such weather days will have on the Design-Builder's abilities to perform its obligations along with a plan to deal with the effects of such weather days and proposed amendments to all affected schedules and the Gantt Chart necessarily resulting therefrom. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rainy days pursuant to this subsection shall result in the denial of a request for extra time for performance under the Design-Build Documents. In the event of such failure, no adjustment shall be made to the Guaranteed Maximum Price, and the Design-Builder shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in the adjustment of the working time, due to any of the factors outlined within this subsection.

96. Section 14.2.2.2 is hereby amended by inserting the phrase "in whole or in part" between the word "Claim" and the comma immediately preceding the parenthetical (4).

97. Section 14.2.4 is hereby amended by deleting the last sentence of Section 14.2.4 and replacing it with a new sentence to read as follows:

Within ten days after Owner's receipt of the Design-Builder's response or supporting data, if any, the Owner will (1) request additional supporting data if the information supplied is incomplete, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the

Claim in whole or in part, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

98. Sections 14.2.6, 14.2.6.1, 14.2.7 and 14.2.8 are hereby deleted in their entirety.

99. Section 14.3 and all of its Subsections, including Sections 14.3.1 through 14.3.3, are hereby amended by deleting such Sections in their entirety and replacing such Sections with new Sections 14.3, 14.3.1, 14.3.2 and 14.3.3 to read as follows:

**§ 14.3 MEDIATION**

**§ 14.3.1** In the event that the Owner or the Design-Builder shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

**§ 14.3.2** Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

**§ 14.3.3** In the event the Owner and the Design-Builder are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

100. Section 14.3 is hereby further amended by adding new Sections 14.3.4 and 14.3.5 to read as follows:

**§ 14.3.4** Venue for any mediation or lawsuit arising under this contract shall be in Johnson County, Texas.

**§ 14.3.5** The parties shall share the mediator's fee equally. The mediation shall be held in Johnson County unless another location is mutually agreed upon by and between the parties. Agreements reached in or through mediation shall be enforceable in the state courts of Johnson County, Texas.

101. Section 14.4 and all of its Subsections, including Subsections 14.4.1, 14.4.1.1, 14.4.2, 14.4.3, 14.4.4, 14.4.4.1, 14.4.4.2, and 14.4.4.3, are hereby amended by deleting such Section and Subsections in their entirety.

102. Section 15.1 is hereby amended by deleting Section 15.1 in its entirety and replacing it with a new Section 15.1 to read as follows:

**§ 15.1** The Contract Documents shall be governed by the laws of the State of Texas. The Contract is deemed performable entirely in Johnson County, Texas. Any litigation to enforce or interpret any terms of the Contract Documents or any other litigation arising out of or as a result of the Work shall be brought in the State courts of Johnson County, Texas.

126. Section 15.3 is hereby amended by deleting Section 15.3 in its entirety and replacing it with a new Section 15.3 to read as follows:

**§ 15.3** Written notice shall be deemed to have been duly served if delivered in person to the individual or 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 (a) by registered or certified mail with return receipt requested or (b) by courier service providing proof of delivery to the last business address known to the party giving notice. In addition, or in the alternative, such delivery may be accomplished by facsimile transmission to the correct facsimile (telephone) number or by electronic mail to the correct email address for the party being given such notice. In the case of delivery by facsimile or e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a) or (b) herein-above. The notice will be deemed given on the day the notice is actually first received.

127. Section 15.5.1 is hereby amended by deleting Section 15.5.1 in its entirety and replacing it with a new Section 15.5.1 to read as follows:

**§ 15.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. The Design-Builder shall use only materials in the Work, which meet the requirements of the Specifications. The Owner will contract for, independently of the Design-Builder, such inspection services, testing of construction materials engineering, and verification testing services necessary for the acceptance of the Work by the Owner. The Design-Builder shall give timely notice to the Owner and such other persons or entities selected by the Owner of the need for such services. The

Design-Builder shall furnish, at his own expense, all necessary specimens for testing of the materials and when requested, shall furnish a complete written statement of the origin, composition, and/or manufacturer of any or all materials that are to be used in the Work. **THIS QUALITY CONTROL SERVICE DOES NOT RELIEVE THE DESIGN-BUILDER OF HIS RESPONSIBILITY WITH REGARD TO CONSTRUCTING THE WORK IN ACCORDANCE WITH THE DESIGN-BUILD DOCUMENTS.** All materials not conforming to the requirements of the Specifications will be rejected. Repeating any of the foregoing procedures after failure to pass any such test, inspection or approval shall be at the sole cost and expense of the Design-Builder as provided in Section 15.5.2.

128. Section 15.5.2 is hereby amended by deleting Section 15.5.2 in its entirety and replacing it with a new Section 15.5.2 to read as follows:

**§ 15.5.2** Owner shall pay for the initial testing performed by the engineering testing laboratory retained by the Owner on materials furnished and Work performed by Design-Builder. Retesting after failure to pass any test shall be at the sole expense of the Design-Builder. Payment for any and all Retests may be deducted and permanently withheld from the Design-Builder's total compensation unless the Design-Builder pays for such Retests within 20 days of the receipt of an invoice for such Retest.

Owner shall not be liable for or responsible to pay for tests or Retests performed by any person or entity other than the engineering testing laboratory retained by Owner for that purpose.

129. Section 15.6.1 is hereby amended by adding the following sentence at the end of the existing Section 15.6.1:

In this regard, it is specifically understood and agreed that the Owner is a governmental entity which is subject to the Texas Public Information Act, and that Owner will provide Design-Builder notice of any Public Information Act request received for Confidential Information under this Agreement so that Design-Builder may seek to protect such information from disclosure under the Chapter 551 of the Texas Government Code.

130. Section 15.8.2 is hereby amended by deleting Section 15.8.2 in its entirety and replacing it with a new Section 15.8.2 to read as follows:

**§ 15.8.2** Technical terms not specifically defined in the Design-Build Documents shall have the meanings given in AIA Document "Glossary of Construction Industry Terms," July 1982 edition. Technical terms not defined as above and used to describe items of the Work and which so applied have a well-known technical or trade meaning, shall be held to have such recognized meaning.

131. Article 15, "Miscellaneous Provisions," is hereby amended by adding a new Section 15.9 to read as follows:

**§ 15.9 Conflict of Interest**

**§ 15.9.1** Design-Builder covenants and agrees that Design-Builder and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Agreement. All activities, investigations and other efforts made by Design-Builder pursuant to this Agreement will be conducted by employees, associates or subcontractors of Design-Builder.

**§ 15.9.2** In addition, Design-Builder shall comply with the requirements of Texas Government Code § 2252.908 by completing and submitting Form 1295 to the Texas Ethics Commission ("Commission") at the time Design-Builder submits this signed Agreement to CITY, and as follows:

Form 1295 Filing Process: The Commission has made available on its website a new filing application that must be used to file Form 1295. The Design-Builder must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the Design-Builder must sign the printed copy of the form and complete the "unsworn declaration" which includes, among other things, the date of birth and address of the authorized representative signing the form. The completed Form 1295 with the certification of filing must be filed with the Owner.

The Owner must notify the Commission, using the Commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the Agreement binds all parties to the Agreement. The Commission will post the completed Form 1295 to its website within seven business days after receiving notice from the Owner.

Form 1295 Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

For questions regarding and assistance in filling out Form 1295, please contact the Texas Ethics Commission at 512-463-5800.

132. Article 15, "Miscellaneous Provisions," is hereby amended by adding a new Section 15.10 to read as follows:

**§ 15.10 Required Anti-Boycotting and Anti-Discrimination Provisions.**

**§ 15.10.1 Prohibition on Contracts with Companies Boycotting Israel.** In accordance with Chapter 2271, Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.

Chapter 2271 does not apply to: (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Design-Builder is not subject to Chapter 2271 for the reasons stated herein, the signatory executing this Agreement on behalf of the Design-Builder verifies by its signature on this Agreement that the Design-Builder does not boycott Israel and will not boycott Israel during the term of this Agreement.

**§ 15.10.2 Prohibition on Contracts with Companies Boycotting Energy Companies.** In accordance with Senate Bill 13, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter

into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless the Design-Builder is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Design-Builder verifies by its signature on this Agreement that the Design-Builder does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

**§ 15.10.3 Prohibition on Contracts with Companies That Discriminate Against a Firearm Entity or Firearm Trade Association.** In accordance with Senate Bill 19, 87th Leg., R.S., to be codified in Chapter 2274, Texas Government Code, a Texas governmental entity may not enter into a contract with a company for the provision of goods or services unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against any firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against any firearm entity or firearm trade association.

Chapter 2274 does not apply to: (1) a company that has fewer than ten (10) full-time employees; or (2) a contract that has a value of less than One Hundred Thousand Dollars (\$100,000.00). In addition, this provision does not apply to: (1) a contract with a sole-source provider; or (2) a contract for which the governmental entity did not receive any bids from a company that is able to provide the required written verification. Unless the Design-Builder is not subject to Chapter 2274 for the reasons stated herein, the signatory executing this Agreement on behalf of the Design-Builder verifies by its signature on this Agreement that the Design-Builder does not have a practice, policy, guidance, or directive that discriminates against any firearm entity or firearm trade association and will not discriminate against any firearm entity or firearm trade association during the term of this Agreement.

133. Section 16.1 is hereby amended by deleting Subsection .4 in its entirety.

134. Section 16.1 is further hereby amended by amending Subsection .6 to read as follows:

**.6 Other:**

**.1 Addendum to the *Standard Form of Agreement Between Owner and Design-Builder*, AIA Document A141 – 2014;**

**II.**

In the event of conflict in the language of the Agreement and this Addendum, the terms of this Addendum shall be final, controlling and binding upon the parties. Where a portion of the Agreement is not amended, replaced, modified and/or supplemented by this Addendum, the unaltered portions of the Agreement shall remain in full force and effect.

**III.**

This Addendum, when combined with the Agreement contains the entire agreement between Owner and Design-Builder with respect to the subject matter hereof, and except as otherwise provided herein cannot be modified without written agreement of the parties. Said Agreement shall be fully effective as written except that it shall be read as if the foregoing deletions, modifications and additions were incorporated therein word for word.

**IV.**

This Addendum and the Agreement are entered into subject to the Joshua City Charter and ordinances of City, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Design-Builder will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Design-Builder's income. Situs of this Contract is agreed to be Johnson County, Texas, for all purposes, including performance and execution.

**V.**

If any of the terms, provisions, covenants, conditions or any other part of this Addendum are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Addendum shall remain in full force and effect and shall in no way be affected, impaired or invalidated.



**VI.**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Addendum may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Addendum.

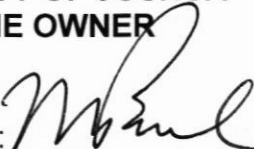
**VII.**

For purposes of this Addendum, including its intended operation and effect, the parties (Owner and Design-Builder) specifically agree and contract that: (1) the Addendum only affects matters/disputes between the parties to this Addendum, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with Owner or Design-Builder or both; and (2) the terms of this Addendum are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either Owner or Design-Builder.

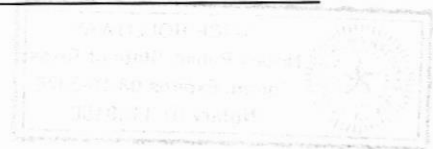
**IN WITNESS WHEREOF**, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

**OWNER:**

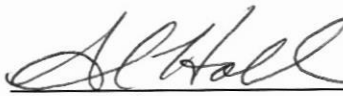
**CITY OF JOSHUA  
THE OWNER**

By:   
Mike Peacock  
City Manager

Date Signed: 5/15/2023



**ATTEST:**

  
Alice Holloway  
City Secretary

**APPROVED AS TO FORM:**

Terry Welch  
Terrence S. Welch  
City Attorney

**CITY OF JOSHUA**

By: Mike Peacock  
Name: Mike Peacock  
Title: City Manager

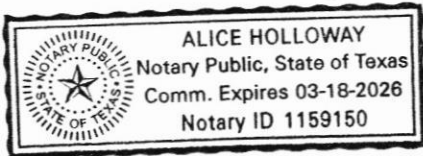
Date Signed: May 15, 2023

**THE STATE OF TEXAS            )  
COUNTY OF JOHNSON         )**

**BEFORE ME**, the undersigned authority, in and for said County, Texas, on this day personally appeared Mike Peacock, City Manager of the **CITY OF JOSHUA**, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 15 DAY OF May, 2023.**

Alice Holloway  
Notary Public Johnson County, Texas  
My commission expires \_\_\_\_\_



**DESIGN-BUILDER:**

**FALCON CONSTRUCTION SERVICES**

By: [Signature]  
Name: Jeffrey D King  
Title: CEO

Date Signed: 05-15-2023

**THE STATE OF TEXAS )**  
**COUNTY OF Tarrant )**

This instrument was acknowledged before me on the 16<sup>th</sup> day of May, 2023, by Jeff King, in his capacity as President of Dalcom, a D LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Dalcom LLC.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 16<sup>th</sup> DAY OF May, 2023.**

[Signature]  
Notary Public Tarrant County, State of Texas  
My commission expires: 