

**ADDENDUM to
The General Conditions of the Contract for Construction
AIA Document A201-2017**

This Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017 ("Addendum"), is entered into this 14 day of June, 2022, by and between Pogue Construction Co., L.P. (the "Construction Manager") and the Town of Prosper, Texas, (the "Owner"). This Addendum is entered into to delete from, amend, replace, modify, add to, and/or supplement the *General Conditions of the Contract for Construction*, AIA Document A201-2017 (the "Agreement"), as set forth herein below.

W I T N E S S E T H:

WHEREAS, the Owner and Construction Manager desire to enter into the Agreement for the construction of the Town of Prosper Fire Station No. 4, RFP No. 2022-46-B; and

WHEREAS, the Owner and Construction Manager desire to clarify and revise certain of the terms and provisions contained in the Agreement; and

WHEREAS, the Owner and Construction Manager 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 1.1.2 is hereby amended by deleting the third sentence of such provision 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.

2. Section 1.1.8 is hereby amended by deleting the second sentence of such provision in its entirety.

2. Section 1.1.8 is hereby amended by deleting the second sentence of such provision in its entirety.

3. Section 1.1 is hereby amended by adding a new Section 1.1.9 to read as follows:

§ 1.1.9 General Reference Notes

§ 1.1.9.1 Where the term "Contractor" is used throughout the Agreement and this Addendum it shall be replaced with the phrase "Construction Manager at Risk ("CMAR")."

§ 1.1.9.2 Where the phrase "total bid price" is used throughout the Agreement and this Addendum it shall be replaced with the phrase "Guaranteed Maximum Price."

4. Section 1.2.3 is hereby amended by deleting Section 1.2.3 in its entirety and replacing it with a new Section 1.2.3 to read as follows:

§ 1.2.3 Technical terms not specifically defined in the Contract 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.

5. Section 1.2 is hereby amended by adding a new Section 1.2.4 to read as follows:

§ 1.2.4 Precedence of the Contract Documents

The Contract Documents shall consist of the following documents:

- .1 Contract Modifications signed by CMAR and Owner.
- .2 *General Conditions of the Contract for Construction*, AIA A201-2017, as modified by the Addendum to the *General Conditions of the Contract for Construction*, AIA Document A201-2017.
- .3 As applicable:
 - .1 *Standard Form of Agreement Between Owner and Architect*, AIA Document B101-2017, as modified by the Addendum to the *Standard Form of Agreement*

Between Owner and Architect, AIA Document B101 – 2017; or

.2 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, AIA Document A133-2009, as modified by the Addendum to the 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, AIA Document A133-2009; or

.3 Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2014, as modified by the Addendum to the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2014; or

.4 Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor, AIA Document A121 CMc-2003 and AGC Document 565, as modified by the Addendum to the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor, AIA Document A121 CMc-2003 and AGC Document 565.

.4 Addenda to construction documents, with those of later date having precedence over those of earlier date.

.5 Specifications.

.6 Drawings.

These Contract Documents are incorporated by reference into this Addendum and the Agreement as if set out here in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above, with the most recently issued document taking precedence over previous issues of the same document.

6. Section 1.2 is hereby amended by adding a new Section 1.2.5 to read as follows:

§ 1.2.5 Relation of Specifications and Drawings

To be equivalent in authority and priority. If there exists a conflict or inconsistency between the Specifications and the Drawings it shall be the CMAR's obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the CMAR fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the CMAR shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair and/or correct that component of the project. In the event of the above-mentioned conflict or inconsistency, the resolution shall be determined by the Initial Decision Maker.

7. Section 1.2 is hereby amended by adding a new Section 1.2.6 to read as follows:

§ 1.2.6 Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect and the Owner.

8. Section 1.2 is hereby amended by adding a new Section 1.2.7 to read as follows:

§ 1.2.7 When the work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the edition thereof officially adopted by the Town of Prosper, Texas, together with any officially adopted local amendments thereto as of the Agreement date shall apply. If the Town of Prosper, Texas, has not officially adopted a specific edition of a particular standard, building code, manufacturer's instruction, or other document that governs the work the then current edition as of the Agreement date together with any local amendments officially adopted thereto by the Town of Prosper, Texas, shall apply unless otherwise specified in the Contract Documents.

9. Section 1.2 is hereby amended by adding a new Section 1.2.8 to read as follows:

§ 1.2.8 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

10. Section 1.5.1 is hereby amended by deleting the first sentence of such provision and replacing it with the following sentence:

The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights as against the CMAR, Subcontractors, Sub-subcontractors, and material or equipment suppliers.

11. Section 1.5 is hereby amended by adding a new Section 1.5.3 to read as follows:

§ 1.5.3 The Owner and CMAR agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Guaranteed Maximum Price proposal by the CMAR is a representation that the CMAR has thoroughly reviewed and become familiar with the Contract Documents and that the CMAR is not then aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the CMAR in the performance of the Contract Work. Any claims for damages or increase in the Contract Amount asserted by the CMAR due to delays or disruptions to the Work arising out of any errors, inconsistencies or omissions impacting the completeness or accuracy of the Contract Documents shall be subject to the provisions of Sections 3.2.2, 8.3.1, and 8.3.3 of the Agreement as said sections have been amended and modified by this Addendum. This limitation on damages is further subject to the limitations set forth in the Contract Documents.

12. Section 1.6 and Subsections 1.6.1 and 1.6.2 are hereby amended by deleting Section 1.6 and Subsection 1.6.1 and 1.6.2 in their entirety and replacing Section 1.6 with a new Section 1.6 to read as follows:

§ 1.6 Notice

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 by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice. Notice will be effective upon physical delivery of the notice in person or by courier service providing proof of delivery; or, four (4) business days after the date of mailing by certified mail, return receipt requested.

In addition, or in the alternative, delivery of such written notice may be made by electronic mail transmission ("Email") to the Email address of the party to which such notice is being given. Any notice delivered by Email shall request a receipt thereof confirmed by Email or in writing by the recipient and followed by personal or mail delivery of such correspondence and any attachments as may be requested by the recipient. The effective date of written notice by Email shall be the date of receipt, provided such receipt has been confirmed by the Email recipient. If no Email reply has been received by the sender within one (1) business day from Emailing the notice, the written notice is deemed incomplete, and sender must send written notice in person or by messenger or certified mail, return receipt requested.

13. Section 1.7 is hereby amended by deleting Section 1.7 in its entirety and replacing Section 1.7 with a new Section 1.7 to read as follows:

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the development, use, transmission, and exchange of Instruments of Service or any other information or documentation in digital form, unless otherwise already provided in the Agreement or the Contract Documents.

14. Section 1.8 is hereby amended by deleting Section 1.8 in its entirety and replacing Section 1.8 with a new Section 1.8 to read as follows:

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement regarding protocols

governing the use of, and reliance on, the information contained in the model and without having those protocols shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

15. Section 2.1.1 is hereby amended by deleting Section 2.1.1 in its entirety and replacing it with a new Section 2.1.1 to read as follows:

§ 2.1.1 The Owner is the Town of Prosper, Texas, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall no implied authority. beyond the scope of authority expressly set forth herein. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner in any regard.

16. Section 2.1.2 is hereby amended by deleting Section 2.1.2 in its entirety and replacing it with a new Section 2.1.2 to read as follows:

§ 2.1.2 CMAR acknowledges that no lien rights exist with respect to public property.

17. Section 2.2 and Subsections 2.2.1, 2.2.2, 2.2.3, and 2.2.4 are hereby amended by deleting Section 2.2 and Subsections 2.2.1, 2.2.2, 2.2.3, and 2.2.4 in their entirety and replacing Section 2.2 with a new Section 2.2 to read as follows:

§ 2.2 Evidence of the Owner's Financial Arrangements

This Project is a public project governed by Chapter 2253 of the Texas Government Code. Prior to the Owner's execution of the Guaranteed Maximum Price Amendment, the Owner acting by and through the Town Council of the Town of Prosper, Texas, approved the Owner's execution of the Guaranteed Maximum Price Amendment and authorized the expenditure of funds up to, and set aside funds in an amount not to exceed the full amount of the Guaranteed Maximum Price Amendment for the Construction Manager's full and complete performance of the Project in strict accordance with the Contract Documents.

18. Section 2.3.3 is hereby amended by deleting Section 2.3.3 in its entirety and replacing it with a new Section 2.3.3 to read as follows:

§ 2.3.3 If the employment of the Architect is terminated, the Owner shall employ a replacement Architect who shall assume the status of "Architect" under the Contract Documents.

19. Section 2.3.4 is hereby amended by deleting the last sentence of Section 2.3.4 in its entirety.

20. Section 2.3.5 is hereby amended by deleting Section 2.3.5 in its entirety and replacing it with a new Section 2.3.5 to read as follows:

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents and such other information or services that are within the Owner's control and relevant to CMAR's performance of the Work within a reasonable time following actual receipt of a written request for such information or services.

21. Section 2.3.6 is hereby amended by deleting Section 2.3.6 in its entirety and replacing it with a new Section 2.3.6 to read as follows:

§ 2.3.6 The Owner shall furnish one copy of the Contract Documents, including the Drawings and Project Manuals, free of charge. The CMAR will be responsible for the cost of any additional copies it needs or desires for the Project.

22. Section 2.3 is hereby amended by adding a new Section 2.3.7 to read as follows:

§ 2.3.7 Owner's personnel may be, but are not required to be, present at the construction site during progress of the Work to: assist the Architect in the performance of his duties; and, to verify the CMAR's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of CMAR's Applications for Payment.

23. Section 2.4 is hereby amended by deleting Section 2.4 in its entirety and replacing it with a new Section 2.4 to read as follows:

§ 2.4 If the CMAR fails to correct nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by the Contract 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 CMAR 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 CMAR or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's rights under paragraph 12.2.

24. Section 2.5 is hereby amended by deleting Section 2.5 in its entirety and replacing it with a new Section 2.5 to read as follows:

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If CMAR defaults or neglects to carry out the Work in accordance with 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.

§ 2.5.2 If the CMAR fails to complete the Work in accordance with the time limit stipulated in the Certificate of Substantial Completion, then Owner may take over the completion of Work without advance notice to CMAR and without prejudice to any other remedy that Owner may have.

§ 2.5.3 In such cases as described in Sections 2.5.1 and 2.5.2, an appropriate modification will be issued deducting from the Contract Sum the reasonable cost of correcting such deficiencies or completing such Work, regardless of whether Owner actually undertakes completing such Work, in which case the deduction shall be based on the Architect's estimate in accordance with Section 7.3.4, including 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 CMAR are both subject to prior approval of the Architect. If the unpaid balance of the Contract Sum is not sufficient to cover such amounts, the CMAR shall pay the difference to the Owner.

§ 2.5.4 In the case of a Contract Sum based upon a Guaranteed Maximum Price that includes a GMP Contingency, the unused GMP Contingency shall not be included in the calculation required by Section 2.5.3 of unpaid balance of the Contract Sum, and the reduction in the Contract Sum shall not be applied to the GMP Contingency.

25. Section 3.1.2 is hereby amended by deleting Section 3.1.2 in its entirety and replacing it with a new Section 3.1.2 to read as follows:

§ 3.1.2 The CMAR shall perform the Work in a good and workmanlike manner in accordance with the Contract Documents save and except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which event the CMAR shall perform the Work to such higher degree of finish or workmanship.

26. Section 3.1 is hereby further amended by adding a new Section 3.1.4 to read as follows:

§ 3.1.4 It is understood and agreed that the relationship of CMAR to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make CMAR the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and CMAR. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect CMAR's independent contractor status as described herein.

27. Section 3.1 is also hereby amended by adding a new Section 3.1.5 to read as follows:

§ 3.1.5 Representations and Warranties

§ 3.1.5 The CMAR represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the final completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;
- .4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and
- .5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents.

28. Section 3.2.1 is hereby amended by adding the following sentence to the end of Section 3.2.1 to read as follows:

Signing any one of the Contract Documents shall be considered as signing all of the Contract Documents.

29. Section 3.2.2 is hereby amended by deleting the second sentence of such provision and replacing it with the following sentence:

Any errors, omissions, or inconsistencies discovered by the CMAR shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

30. Section 3.2.2 is hereby further amended by adding the following sentence to the end of Section 3.2.2:

CMAR shall not perform construction activity when CMAR knows, in exercise of reasonable diligence, that the activity involves error, inconsistency, or omission in Contract Documents.

31. Section 3.2.2 is hereby further amended by adding the following clauses to the end of Section 3.2.2 to read as follows:

- .1 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 Owner.
- .2 The CMAR 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, CMAR shall verify at the site all dimensions relating

to such existing or other work. Any errors due to the CMAR's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the CMAR.

- 3 CMAR shall not be entitled to any additional time or compensation for any additional work caused by or arising out of the CMAR's failure to carefully study and compare the Contract Documents prior to execution of the Work.

32. Section 3.2.4 is hereby amended by deleting the second and third sentences of such provision and replacing them with the following sentences:

If the CMAR fails to perform the obligations of Sections 3.2.2 or 3.2.3, with reasonable diligence, the CMAR shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations with reasonable diligence. If the CMAR performs the obligations of Sections 3.2.2 or 3.2.3, with reasonable diligence the CMAR shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

33. Section 3.2 is hereby further amended by adding a new Section 3.2.5 to read as follows:

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, CMAR is responsible for contacting all private and public utilities to determine the location of existing facilities and compliance with the State of Texas' "call before you dig" program mandated by Texas Utility Code Chapter 251 prior to any digging or excavation. CMAR shall notify Owner in the event that one or more private and public utilities fails or refuses to respond to CMAR prior to any digging or excavation to allow the Owner an opportunity to assist in persuading the utility to identify the location of their existing facilities. CMAR shall use reasonable efforts to perform all work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. CMAR shall be responsible for, and shall repair at CMAR's own expense, any damage done to lines, cables, pipes, and

pipelines by CMAR that are identified by such entities through this coordination by CMAR.

34. Section 3.3.1 is hereby amended by deleting the fourth, fifth and sixth sentences of such provision and replacing them with the following sentences

If the CMAR determines that such means, methods, techniques, sequences or procedures may not be safe, the CMAR shall give timely written notice to the Owner and Architect, and shall not proceed with that portion of the Work without further written instructions from the Architect. The CMAR shall propose to Architect and Owner alternate means, methods, techniques, sequences or procedures that the Architect shall review the proposed alternate for conformance with the design intent for the completed Work. If the CMAR is then instructed in writing by the Architect to proceed with the required construction means, methods, techniques, sequences or procedures set out in the Construction Documents without acceptance of the changes proposed by the CMAR, the Architect shall be responsible for any loss or damage arising solely from those required means, methods, techniques, sequences or procedures. All such construction directives will be submitted to the Owner for Owner's concurrence and written approval prior to CMAR's performance of that portion of the Work so questioned.

35. Section 3.3 is hereby further amended by adding a new Section 3.3.4 to read as follows:

§ 3.3.4 CMAR 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.*

36. Section 3.3 is hereby further amended by adding a new Section 3.3.5 to read as follows:

§ 3.3.5 Trench safety systems shall be provided by the CMAR in accordance with the applicable subpart related to Excavation, Trenching, and Shoring of the OSHA Standards as published in Federal Register, Volume 54, No. 209 dated October 31, 1989, and revised effective January 2, 1990. These standards describe safety and health regulations as administered by the U.S. Department of Labor Occupational Safety and health Administration (OSHA). The standards

specified by the OSHA Regulations shall be the minimum allowed on this Project. It shall be the responsibility of the CMAR to provide a design and install adequate trench safety systems for all trenches excavated on this Project.

37. Section 3.3 is also hereby amended by adding a new Section 3.3.6 to read as follows:

§ 3.3.6 The CMAR shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the CMAR's duties shall not relieve any subcontractor(s) or any other person or entity (e.g., a supplier) including any person or entity with whom the CMAR does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this paragraph are not intended to impose upon the CMAR any additional obligations that the CMAR would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

38. Section 3.4.1 is hereby amended by adding a new Section 3.4.1.1 to read as follows:

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

39. Section 3.4.1 is hereby amended by adding a new Section 3.4.1.2 to read as follows:

§ 3.4.1.2 In accordance with Texas Government Code Chapter 2258, the Owner has established a scale of prevailing wages which is incorporated in the Project Manual, 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.

40. Section 3.4.1 is also hereby amended by adding a new Section 3.4.1.3 to read as follows:

§ 3.4.1.3 A CMAR or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 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 Section 2258.023(b).

41. Section 3.4.2 is hereby amended by deleting Section 3.4.2 in its entirety and replacing it with a new Section 3.4.2 to read as follows:

§ 3.4.2 Specified materials, equipment, and systems are essential elements of the Contract. If CMAR desires to use another material, equipment, or system in lieu thereof, the CMAR may make substitutions only under the following circumstances:

- .1 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the CMAR; and, (iii) in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.
- .2 The CMAR must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum related to the substitution; (iv) the adjustment, if any, in the time of completion of the Contract and the construction

schedule related to the substitution; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the CMAR accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect.

- .3 Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the CMAR's submittal of complete substantiating data and information as stated hereinbefore.
- .4 Whether or not any proposed substitution is accepted by the Owner or the Architect, the CMAR shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.
- .5 No substitution shall be made without approval in writing from the Architect. Owner will be the final judge of acceptability of any proposed substitution.

42. Section 3.4.3 is hereby amended by adding the following provisions to the end of Section 3.4.3 to read as follows:

The CMAR shall be responsible for the actions of CMAR's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The CMAR 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 CMAR's forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the CMAR or employees or invitees of the Owner by employees of the CMAR is strictly forbidden. Any employee of the CMAR who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the CMAR, including removal from the job site.

43. Section 3.4 is hereby amended by adding a new Section 3.4.4 to read as follows:

§ 3.4.4 The CMAR 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.

44. Section 3.5 is hereby amended by deleting Section 3.5 in its entirety and replacing it with a new Section 3.5 to read as follows:

§ 3.5 WARRANTY

§ 3.5.1 The CMAR warrants to the Owner and Architect that the materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The CMAR further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions that are not properly approved and authorized, may be considered defective. The CMAR's warranty excludes remedy for damage or defect caused by abuse attributable to Owner; alterations or modifications to the Work not performed by CMAR; improper or insufficient maintenance and/or improper operation attributable to Owner; or, normal wear and tear and normal usage. If required by the Architect, the CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The CMAR 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.

§ 3.5.3 CMAR'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.

§ 3.5.4 The warranty provided in Section 3.5.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require CMAR to replace defective materials and equipment and re-execute defective Work which is disclosed to the CMAR 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.

§ 3.5.5 The CMAR shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.1 and 3.5.2 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.

§ 3.5.6 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. CMAR 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. CMAR agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, CMAR shall accompany the Owner and Architect 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 CMAR of deficiencies and CMAR shall start remedying these defects within three (3) days of initial notification from Owner. CMAR shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If CMAR fails to provide notice of the expiration of the one-year warranty period at least one (1) month prior to the expiration date, CMAR's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 3.5.7 Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract 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. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

45. Section 3.6 is hereby amended by deleting Section 3.6 in its entirety and replacing it with a new Section 3.6 to read as follows:

§ 3.6 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 Section 151.309(5). CMAR 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 Section 151.309(5). Owner will provide the CMAR with a Texas Sales and Use Tax Resale Certificate or other documentation necessary to establish the Owner's exemption from such taxes.

46. Section 3.7.1 is hereby amended by deleting Section 3.7.1 in its entirety and replacing it with a new Section 3.7.1 to read as follows:

§ 3.7.1 Unless otherwise specifically provided to the contrary in the Contract Documents, it shall be the full responsibility of the CMAR 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. No separate payment will be made for this item and it will be considered subsidiary to the other items bid.

47. Section 3.7.2 is hereby amended by adding the following provisions to the end of Section 3.7.2 to read as follows:

The CMAR shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required

under the Contract 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 Contract Documents.

*As it relates to the work eligibility of individuals performing the Work, the CMAR shall comply with the Employment Eligibility Verification (I-9) Form requirements outlined by U.S. Citizenship and Immigration Services ("USCIS") or the E-Verify process for each individual (including both citizens and noncitizens) after the individual has been hired for employment in the United States. In this regard the USCIS indicates that the employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and to relate to the employee, and record the document information on the Form I-9 or the E-Verify process. For additional guidance, please feel free to refer to USCIS website at <https://www.uscis.gov/i-9> and the U.S. Equal Employment Opportunity Commission ("EEOC") website at <https://www.eeoc.gov/pre-employment-inquiries-and-citizenship>.

48. Section 3.7.4 is hereby amended by deleting the first sentence of such provision and replacing it with the following sentence.

If the CMAR encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents taking into account that unless otherwise stipulated in the Contract Documents, excavations and other subsurface construction activity shall be considered unclassified down to design depth, regardless of substrate and abandoned or inactive infrastructure, 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, the CMAR shall promptly provide notice to the Owner and the Architect before disturbing such conditions and/or continuing activities that could lead to a claim for additional cost, and in no event later than fourteen (14) days after first observance of the conditions.

49. Section 3.7 is hereby amended by adding a new Section 3.7.6 to read as follows:

§ 3.7.6 The CMAR 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"), the Texas Commission on Environmental Quality ("TCEQ) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. CMAR'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 CMAR during the construction process which require the issuance of a permit shall be at CMAR's sole cost.

50. Section 3.9.1 is hereby amended by adding the following provisions to the end of Section 3.9.1 to read as follows:

The superintendent shall be capable of reading and thoroughly understanding the Plans and Specifications, and thoroughly experienced in the type of Work being performed. The superintendent shall have full authority to execute orders or directions and to promptly supply such materials, equipment, tools, labor and incidentals as may be required.

Such superintendent shall be furnished irrespective of the amount of Work subcontracted. The superintendent and the CMAR shall be responsible for all work performed by the Subcontractor at all times during construction.

51. Section 3.9.2 is hereby amended by deleting the last sentence of Section 3.9.2 and replacing it with the following provision to read as follows:

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

52. Section 3.9.3 is hereby amended by deleting the last sentence of that provision and replacing it with the following provision to read as follows:

The CMAR shall not replace the superintendent prior to final completion of the Work unless (1) the superintendent shall cease to be employed by the CMAR or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The superintendent may not be employed on any other project prior to final completion of the Work.

53. Section 3.9 is hereby amended by adding a new Section 3.9.4 to read as follows:

§ 3.9.4 The CMAR shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors, Sub-subcontractors and material and equipment suppliers involved in construction of the Work. The Architect shall provide such information to the Owner.

§ 3.9.4.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the CMAR, Subcontractor or Sub-subcontractor involved in the project.

§ 3.9.4.2 CMAR shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require CMAR to dismiss from the work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

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

54. Section 3.10.1 is hereby amended by deleting Section 3.10.1 in its entirety and replacing it with a new Section 3.10.1 to read as follows:

§ 3.10.1 The CMAR, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a CMAR'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 Contract 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 9.6.

- .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 CMAR, Owner, and Architect. Each schedule shall also include cash flow projections for the use of and review by the CMAR, Owner and Architect.
- .2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect 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 Contract Documents for completion of the Work, the CMAR shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the CMAR's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the CMAR asserts that the failure of the Owner or the Architect to provide information to the CMAR is the reason for anticipated delay in completion, the CMAR shall also specify what information is required from the Owner or Architect.
- .5 Neither the Owner or the CMAR shall have exclusive ownership of float time in the schedule. All float time shall inure to the benefit of the Project. The CMAR 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 CMAR that: (1) the schedule represents the sequence in which the CMAR 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 CMAR is able to complete the remaining Work in the sequence and time indicated; and, (4) that the CMAR intends to complete the remaining work in the sequence and time indicated.

55. Section 3.10 is hereby amended by adding a new Section 3.10.4 to read as follows:

§ 3.10.4 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 and the Architect. 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 Contract Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement as Exhibit A. If not accepted, the construction schedule shall be promptly revised by the CMAR in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The CMAR 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, the CMAR 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.

56. Section 3.10 is hereby further amended by adding a new Section 3.10.5 to read as follows:

§ 3.10.5 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 Contract Documents, the Owner shall have the right to order the CMAR 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 Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the CMAR's compliance with the construction schedule.

- .1 The CMAR 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 3.10.5.
- .2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the CMAR's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

57. Section 3.10 is also hereby amended by adding a new Section 3.10.6 to read as follows:

§ 3.10.6 If reasonably required by Owner, CMAR 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.

58. Section 3.10 is also hereby amended by adding a new Section 3.10.7 to read as follows:

§ 3.10.7 The CMAR shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet

the project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the CMAR. Upon the Owner's acceptance of the CMAR's Cost of the Work plus a fee with a Guaranteed Maximum Price, all contracts previously entered into by Owner shall be assigned by Owner to the CMAR who shall accept responsibility for such contracts as if it had initially entered into such contracts. CMAR shall expedite the delivery of long-lead time items.

59. Section 3.11 is hereby amended by numbering the paragraph immediately following the line "**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**" as Section 3.11.1.

60. Section 3.11 is also hereby amended by adding a new Section 3.11.2 and a new Section 3.11.3 to read as follows:

§ 3.11.2 CMAR 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. CMAR shall make such reports and records available to inspection by the Owner, Architect, or their respective agents, within five (5) working days of request by Owner, Architect, or their respective agents.

§ 3.11.3 CMAR shall at all times have access, from the site, to all applicable building codes, reference standards, installation instructions and other documents referenced by the Contract 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, Architect, or their respective agents during any site visits and construction meetings.

61. Section 3.12.6 is hereby amended by adding the following sentence to the end of Section 3.12.6:

§ 3.12.6 If a portion of the Work that is demonstrated by a submittal deviates from the requirements of the Contract Documents, the CMAR shall specifically identify the deviation and its difference in cost as part of the submittal.

62. Section 3.13 is hereby amended by numbering the paragraph immediately following the line "**§ 3.13 USE OF SITE**" as Section 3.13.1.

63. Section 3.13 is also hereby amended by adding a new Section 3.13.2 to read as follows:

§ 3.13.2 The CMAR 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.

64. Section 3.15.1 is hereby amended by adding the following provisions to the end of Section 3.15.1 to read as follows:

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

65. Section 3.15.2 is hereby amended by deleting Section 3.15.2 in its entirety and replacing it with a new Section 3.15.2 to read as follows:

§ 3.15.2 If the CMAR fails to clean up as required by the Contract Documents, the Owner may do so and the cost thereof shall be charged to the CMAR.

66. Section 3.15 is hereby amended by adding a new Section 3.15.3 to read as follows:

§ 3.15.3 The CMAR shall be responsible for any damaged or broken items, and at completion of the Work, shall replace such damaged or broken items.

67. Section 3.18.1 is hereby amended by deleting Section 3.18.1 in its entirety and replacing it with a new Section 3.18.1 to read as follows:

§ 3.18.1 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), CMAR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOWN OF PROSPER (OWNER) AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, 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 OCCASIONED BY THE WRONGFUL INTENTIONAL ACT, ERROR, OMISSION, OR NEGLIGENT ACT OF CMAR, HIS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUB-SUBCONTRACTORS, INVITEES OR ANY OTHER PERSONS, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT, AND CMAR WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT TOWN OF PROSPER (OWNER) FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

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), CMAR DOES HEREBY AGREE TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS TOWN OF PROSPER (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 ATTORNEYS 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. SUCH INDEMNITY SHALL APPLY WHETHER THE CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE TOWN OF PROSPER (OWNER), ITS OFFICERS, OFFICIALS, AGENTS OR EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY CMAR TO INDEMNIFY AND PROTECT TOWN OF PROSPER (OWNER) FROM THE CONSEQUENCES OF TOWN OF PROSPER'S (OWNER'S) OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE.

68. Section 3.18.2 is hereby amended by deleting Section 3.18.2 in its entirety and replacing it with a new Section 3.18.2 to read as follows:

§ 3.18.2 IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED UNDER THIS SECTION 3.18 BY ANY EMPLOYEE OF THE CMAR, ANY SUBCONTRACTOR, ANY SUB-SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, 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 CMAR, ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR UNDER WORKMEN'S COMPENSATION OR ANY OTHER DISABILITY BENEFITS ACT OR EMPLOYEE BENEFIT ACTS.

69. Section 3.18 is hereby further amended by adding a new Section 3.18.3 to read as follows:

§ 3.18.3 CMAR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CMAR'S OR ITS SUBCONTRACTOR'S OR ITS SUB-SUBCONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CMAR'S OBLIGATIONS UNDER PARAGRAPH 3.18.1. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH CMAR AND OWNER, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH AS TO CMAR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN INDEMNITY BY CMAR TO INDEMNIFY AND PROTECT OWNER, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B), FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CMAR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CMAR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF

FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CMAR ARE ALL PARTIES.

70. Section 3.18 is also hereby amended by adding a new Section 3.18.4 to read as follows:

§ 3.18.4 INDEMNIFICATION HEREUNDER SHALL INCLUDE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LIABILITY WHICH COULD ARISE TO THE OWNER, ITS AGENTS, CONSULTANTS, AND REPRESENTATIVES 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 CMAR IS TO COMPLY WITH SAID STATUTES IN PERFORMANCE OF THE WORK BY CMAR AND THAT THE OBLIGATIONS OF THE OWNER, ITS AGENTS, CONSULTANTS, AND REPRESENTATIVES UNDER SAID STATUTES ARE SECONDARY TO THAT OF THE CMAR.

71. Section 3.19 is hereby created by adopting and adding the following Section 3.19 to read as follows:

§ 3.19 BUSINESS STANDARDS.

CMAR, in performing its obligations under this Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. CMAR shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of CMAR's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

72. Section 4.2.2 is hereby amended by adding the phrase “, except as provided in Section 3.1.1” to the end of said Section 4.2.2.

73. Section 4.2.4 is hereby amended by adding the phrase “endeavor to” between the words “shall”: and “include” in the first line of Section 4.2.4.

74. Section 4.2.6 is hereby amended by changing all references to the term “Architect” throughout Section 4.2.6 from “Architect” to “Architect or Owner.”

75. Section 4.2.7 is hereby amended by deleting the phrase “, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents” from the first sentence of Section 4.2.7.

76. Section 4.2.7 is hereby further amended by inserting the phrase “unless otherwise specifically stated by the Architect” at the end of the next to last sentence of said Section 4.2.7.

77. Section 4.2.9 is hereby amended by deleting Section 4.2.9 in its entirety and replacing it with a new Section 4.2.9 to read as follows:

§ 4.2.9 The Architect and the Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Architect will receive 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 CMAR, and will issue a final Certificate for Payment upon full compliance with the requirements of the Contract Documents.

78. Section 4.2.11 is hereby amended by deleting the first sentence of Section 4.2.11 in its entirety and replacing it with a new sentence to read as follows:

Upon written request of the Owner or CMAR the Architect will issue its interpretation regarding performance under and the requirements of the Contract Documents.

79. Section 4.2.12 is hereby amended by deleting the second sentence of Section 4.2.12 in its entirety.

80. Section 4.2.13 is hereby amended by deleting Section 4.2.13 in its entirety and replacing it with a new Section 4.2.13 to read as follows:

§ 4.2.13 The Architect’s decision on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

81. Section 5.2.1 is hereby amended by deleting the last sentence of Section 5.2.1 and replacing it with the following provision to read as follows:

Failure of the Architect to reply within the 14-day period shall constitute notice that the Architect and Owner have no known objection to the proposed persons and entities. Failure to reply or affirmative consent by the Architect to the proposed persons and entities shall not be deemed to waive or otherwise deprive the Owner and Architect of the right to thereafter complain to the CMAR regarding or otherwise object to the continued performance of the persons and entities on the Work if a reasonable objection to the persons and entities arises during the course of the Work.

82. Section 5.4.1 is hereby amended by deleting Subsection 5.4.1.1 in its entirety and replacing it with a new Subsection 5.4.1.1 to read as follows:

.1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

83. Section 5.4.2 is hereby amended by deleting Section 5.4.2 in its entirety and replacing it with a new Section 5.4.2 to read as follows:

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

84. Section 6.1.1 is hereby amended by replacing the phrase "including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation" with the phrase "Contract Documents" in the second sentence of Section 6.1.1.

85. Section 6.1.4 is hereby amended by deleting Section 6.1.4 in its entirety and replacing it with a new Section 6.1.4 to read as follows:

§ 6.1.4 Owner will not perform construction or operations related to the Project with Owner's own forces or any forces other than CMAR during the term of this Agreement save and except only to the extent specifically called for to the contrary by the Contract Documents or upon CMAR's default and termination as provided in the Contract Documents.

86. Section 6.2.2 is hereby amended by deleting the last sentence of Section 6.2.2 in its entirety and replacing it with a new sentence to read as follows:

The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not reasonably discoverable.

87. Section 7.2 is hereby amended by adding a new Section 7.2.2 to read as follows:

§ 7.2.2 Acceptance of a Change Order by the CMAR 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.

88. Section 7.3.8 is hereby amended by deleting the first sentence of Section 7.3.8 and replacing it with the following provision to read as follows:

The amount of credit to be allowed by the CMAR 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 CMAR's allocated percent for profit and overhead as confirmed by the Architect, subject to equitable adjustment recommended by the Architect and approved by the Owner.

89. Section 8.1.3 is hereby amended by deleting the phrase "Architect" and replacing it with the phrase "Architect and Owner."

90. Section 8.3.1 is hereby amended by deleting Section 8.3.1 in its entirety and replacing it with a new Section 8.3.1 to read as follows:

§ 8.3.1 The Owner and Architect, except as provided for in this Section 8.3.1, shall not be liable to the CMAR for delay to the CMAR's work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's and/or Architect's control. Should the Owner or Architect delay the CMAR in the work, CMAR shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours of the beginning of such delay, and under no circumstances shall the Owner and Architect be liable to pay the CMAR any compensation for such Owner/Architect-caused delays of less than seven (7) consecutive business days in duration. If a written claim is timely submitted for an Owner/Architect-caused delay of seven (7) consecutive business days or longer, Owner will in addition to providing CMAR an extension of time for completion equal to the delay reimburse to CMAR the actual costs directly incurred by CMAR as a direct and proximate

result of such Owner/Architect-caused delay plus CMAR's prescribed fee on the Cost of the Work to the extent only that such actual costs and/or fee is not otherwise covered by insurance. It is specifically agreed and understood that, save and except as specifically provided in the immediately preceding sentence, CMAR shall have no other claim or cause of action for any Owner/Architect-caused delay.

91. Section 8.3.3 is hereby amended by deleting Section 8.3.3 in its entirety and replacing it with a new Section 8.3.3 to read as follows:

§ 8.3.3 Except as specifically provided in Paragraph 8.3.1, as amended herein-above, this Agreement does not permit the recovery of damages by the CMAR for delay, disruption or acceleration. CMAR agrees that CMAR shall be fully compensated for all delays solely in accordance with Paragraph 8.3.1, as amended herein-above.

92. Section 9.3.2 is hereby amended by deleting the phrase "and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site" from the last sentence of Section 9.3.2.

93. Section 9.3.2 is hereby further amended by adding the following sentence to the end of Section 9.3.2 to read as follows:

The CMAR shall be solely responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site save and except only to the extent that (a) Owner determines in its sole discretion that off-site storage of materials and equipment constitutes a benefit to the Project and (b) Owner agrees in advance in writing through a formal written change order to the payment of costs associated with insurance, storage and transportation to the site for specified materials and equipment stored off the site.

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

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

95. 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, CMAR shall certify that there are no known mechanics' or materialmen's' liens outstanding at the date of the requisition, that all due and payable bills with respect to the Work 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 materialmen's' 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 CMAR.

96. Section 9.5.3 is hereby amended by adding the following sentence to the end of Section 9.5.3 to read as follows:

The Owner shall not be deemed in default by reason of withholding payment as provided for in this Section 9.5.

97. 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 CMAR 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. CMAR's failure to make payments within such time shall constitute a material breach of this Contract. CMAR shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the CMAR hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the CMAR has failed to make payment promptly to the CMAR's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the CMAR, the Owner shall be entitled to withhold payment to the CMAR in part or in whole to the extent necessary to protect the Owner.

98. 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 CMAR 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.

99. Section 9.6.8 is hereby amended by deleting and intentionally omitting Section 9.6.8 in its entirety.

100. Section 9.7 is hereby amended by deleting the phrase “or awarded by binding dispute resolution” from the first sentence of Section 9.7.

101. 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, Owner may withhold payment of any further sums due until substantial completion is achieved. Owner shall also be entitled to deduct out of any sums due to CMAR any or all liquidated damages due Owner in accordance with the Contract Documents.

102. Section 9.8.3 is hereby amended by changing all references to the term “Architect” throughout Section 9.8.3 from “Architect” to “Architect or Owner.”

103. Section 9.8.4 is hereby amended by changing all references to the term “Architect” throughout Section 9.8.4 from “Architect” to “Architect or Owner.”

104. Section 9.8.5 is hereby amended by deleting the second and third sentences of Section 9.8.5 in their entirety.

105. Section 9.8 is hereby amended by adding a new Section 9.8.6 to read as follows:

§ 9.8.6 Retainage is not due to the CMAR until 30 days after final completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

106. 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.

107. 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 CMAR is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and 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 Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the CMAR is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the CMAR shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the CMAR's final payment.

108. 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 CMAR shall not be entitled to final payment unless and until it submits to the Architect 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; releases and waivers of liens from all Subcontractors of the CMAR and of any and all other parties required by the Architect or 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 CMAR shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

109. 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 CMAR not more than thirty (30) days after the Architect's execution of a final Certificate for Payment.

110. Article 9 is hereby amended by adopting and adding the following Section 9.11 to read as follows:

§ 9.11 AUDIT.

CMAR agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. CMAR 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 CMAR 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 CMAR at least three (3) days written notice of Owner's intent to perform such an audit.

111. Article 9 is hereby amended by adopting and adding the following Section 9.12 to read as follows:

§ 9.12 In addition to any liquidated damages payable to the Owner by the CMAR, if: (a) the Architect is required to make more than one (1) inspection for Substantial Completion; (b) the Architect is required to make more than one (1) inspection for Final Completion; or (c) the Work is not substantially complete within sixty (60) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

112. 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.

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

§ 10.1.2 CMAR's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. CMAR, 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. CMAR, 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.

CMAR has adopted or will adopt its own policy to assure a drug- and alcohol-free work place while performing the Work.

CMAR 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 CMAR to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, CMAR's employees may only be considered for return to work after the CMAR certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this Contract. CMAR will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

CMAR 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.

114. Section 10.2.5 is hereby amended by deleting Section 10.2.5 in its entirety and replacing it with a new Section 10.2.5 to read as follows:

§ 10.2.5 CMAR SHALL BE RESPONSIBLE FOR AND SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN SECTION 10.2.1.2 EVEN IF SUCH LOSS OR DAMAGE RESULTS FROM OWNER'S OR OWNER'S OFFICERS', CONSULTANT'S, AGENT'S OR EMPLOYEES' NEGLIGENCE. AS TO PROPERTY REFERRED TO IN SECTION 10.2.1.3, CMAR SHALL

INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CMAR, ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OR OWNER'S OFFICERS', CONSULTANT'S, AGENT'S OR EMPLOYEES'. THE FOREGOING OBLIGATIONS OF THE CMAR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; AND, ARE SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B).

115. Section 10.2.8 is hereby amended by deleting Section 10.2.8 in its entirety and replacing it with a new Section 10.2.8 to read as follows:

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be provided to the other party in writing within a reasonable time not exceeding 21 days after discovery. The written notice shall provide sufficient detail to enable the other party to investigate the matter.

116. Section 10.3.1 is hereby amended by deleting Section 10.3.1 in its entirety and replacing it with a new Section 10.3.1 to read as follows:

§ 10.3.1 The CMAR is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the CMAR encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the CMAR, the CMAR shall, upon recognizing the condition, immediately stop Work in the

affected area and notify the Owner and Architect in writing of the condition.

117. 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 CMAR'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 CMAR. 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 CMAR 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 CMAR. By Change Order, the Contract Time shall be extended appropriately. The Contract Sum may be adjusted upon agreement of the parties to address CMAR's actual costs of shut-down and start-up provided that the Work is stopped or abated for more than twenty-one (21) business days.

If Owner terminates the Work as a result of finding a hazardous material or substance as provided herein-above, CMAR will be entitled to receive payment for Work completed and approved as being performed in accordance with the Contract Documents until the date of such termination. CMAR will also be entitled to receive payment for costs incurred by CMAR by reason of such termination excluding overhead and profit on Work not executed and/or approved as being performed in accordance with the Contract Documents. Any payment under this paragraph will be conditioned upon submission and processing of a payment application in strict compliance with the Contract Documents, and the submission of any and all documentation in CMAR'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.

118. Section 10.3.3 is hereby deleted in its entirety.

119. Section 10.3.4 is hereby amended by deleting Section 10.3.4 in its entirety and replacing it with a new Section 10.3.4 to read as follows:

§ 10.3.4 Notwithstanding anything to the contrary set forth in this Section 10.3, the Owner shall not be liable for potentially hazardous or hazardous materials or substances the CMAR brings to the site. In addition, the Owner shall not be liable for the CMAR's storage, use or handling of potentially hazardous or hazardous materials or substances.

120. 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 CMAR SHALL INDEMNIFY THE OWNER FOR THE COST AND EXPENSE THE OWNER INCURS (1) FOR REMEDIATION OF A HAZARDOUS MATERIAL OR SUBSTANCE THE CMAR BRINGS TO THE SITE AND WRONGFULLY OR NEGLIGENTLY STORES, USES OR HANDLES, (2) FOR REMEDIATION OF A HAZARDOUS MATERIAL OR SUBSTANCE THE CMAR WRONGFULLY OR NEGLIGENTLY RELEASES INTO THE ENVIRONMENT, (3) WHERE THE CMAR 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.

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

122. 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 CMAR shall act, at the CMAR's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the CMAR on account of an emergency may be considered as provided in Article 15 and Article 7. It is specifically understood and agreed that Owner shall have no liability or responsibility for any emergency caused, in whole or in part, by any act or omission of CMAR and/or CMAR's contractors, suppliers, and/or any other person(s) or party(ies) for whom CMAR or its contractors or suppliers may be legally responsible.

123. Section 11.1.1 is hereby amended by deleting Section 11.1.1 in its entirety and replacing it with a new Section 11.1.1 to read as follows:

§ 11.1.1 Before commencing work, the CMAR shall, at its own expense, procure, pay for and maintain the following insurance coverage written by companies approved by the State of Texas and acceptable to the Town of Prosper. In the event of a conflict between the insurance requirements contained in this Article 11 and any other provision contained in the Contract Documents or the applicable request for bids or sealed proposals the more stringent requirements and higher policy limits shall control.

- .1 Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
- .2 Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.

- .3 Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
- .4 Umbrella or Excess Liability insurance with minimum limits of \$5,000,000 each occurrence and annual aggregate for bodily injury and property damage, that follows form and applies in excess of the above indicated primary coverage in subparagraphs 1, 2 and 3. The total limits required may be satisfied by any combination of primary, excess or umbrella liability insurance provided all policies comply with all requirements. The Contractor may maintain reasonable deductibles, subject to approval by the Owner.
- .5 Builder's Risk Insurance is required. It shall provide All-Risk coverage including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft in an amount equal to one hundred percent (100%) of the completed value of the project in question. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery equipment up to installation, during testing, and until acceptance by Owner. The policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. The policy shall be written jointly in the names of the Owner, CMAR, Subcontractors and Sub-subcontractors as their interests may appear. The policy shall have endorsements as follows:
 - .1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
 - .2 Loss, if any, shall be adjusted with and made payable to the Owner on behalf of all insureds as their interests may appear.

124. Section 11.1.2 is hereby amended by deleting Section 11.1.2 in its entirety and replacing it with a new Section 11.1.2 to read as follows:

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than the limits of liability specified in the Contract Documents or as required by law, whichever coverage is greater. All such insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent. In the event that any of the coverages contained in Section 11.1.1 conflict with the insurance provisions contained in any other of the Contract Documents the more stringent of such provisions with respect to each type of required coverage shall control. All coverages required for this work shall be written on an occurrence basis and NOT a claims-made basis.

Coverages required by this Section 11.1 shall be maintained without interruption from the date of commencement of the Work through the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the CMAR'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, the Builder's Risk Insurance coverage required by Section 11.1.1.5 shall be maintained by the CMAR without interruption from the date of commencement of the Work through the date Owner (a) issues a Certificate of Substantial Completion for the Work and (b) is able to take possession of and occupy the Work for its intended use.

The policy or policies so issued in the name of CMAR shall also name Subcontractors, Sub-subcontractors and the Owner as additional insureds, as their respective interests may appear. The insurance coverage provided under this Section 11.1 shall be primary coverage. If the coverages provided under this Section 11.1 are written with stipulated amounts deductible under the terms of the policy, the CMAR shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by and through such coverages.

If the Owner is damaged by the failure of the CMAR to maintain such insurance and to so notify the Owner then the CMAR shall bear all reasonable costs properly attributable thereto. Nothing contained herein shall limit or waive CMAR's legal or contractual responsibilities to Owner or others.

125. Section 11.1.3 is hereby amended by deleting Section 11.1.3 in its entirety and replacing it with a new Section 11.1.3 to read as follows:

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to Owner's execution of the Agreement and thereafter upon renewal or replacement of each required policy of insurance. Certificate(s) of insurance provided to attest to coverage shall specifically cite each element of coverage and not less than limits set forth in Section 11.1.2, as confirmation of complete coverage, and shall identify Contractor, Producer, Insurance Carrier, Project, and certificate holder, and state Producer's notice requirements as set forth in Section 11.1.4. The term "Commercial General Liability" shall mean all of the coverage listed in Section 11.1.1.1 unless specifically noted otherwise in the certificate. 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. The CMAR shall furnish such certificates of insurance, executed by the insurer or its authorized agent, to the Town of Prosper Purchasing Manager. The certificates of insurance shall state the type of coverages, limits of each such coverage, expiration dates and compliance with all applicable required provisions. Certificates shall reference the project/contract number and be addressed as follows:

<Project Name and Project Number>
Town of Prosper
Attn: Purchasing Agent
P.O. Box 307
Prosper, Texas 75078

CMAR shall permit Owner to examine the insurance policies, or at Owner's option, CMAR shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 11.1. Failure to provide or maintain any of the coverages required by Section 11.1 shall be deemed a material breach of the Agreement and shall result in termination unless immediately cured by CMAR.

126. Section 11.1.4 is hereby amended by deleting Section 11.1.4 in its entirety and replacing it with a new Section 11.1.4 to read as follows:

§ 11.1.4 With reference to the foregoing required insurance, the CMAR shall also endorse applicable insurance policies as follows:

- .1 A waiver of subrogation in favor of the Town of Prosper, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.
- .2 The Town of Prosper, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.
- .3 All insurance policies shall be endorsed to the effect that Town of Prosper will receive at least thirty (30) days' notice prior to cancellation, non-renewal, termination, or material change of the policies.

127. Section 11.1 is hereby amended by adding a new Section 11.1.5 to read as follows:

§ 11.1.5 CMAR and its subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of CMAR and its Subcontractors and Sub-subcontractors are in force and the necessary certificates and statements required by Section 11.1 have been received by Owner and the Architect has issued a written notice to proceed.

128. Section 11.1 is hereby further amended by adding a new Section 11.1.6 to read as follows:

§ 11.1.6. With respect to Workers' Compensation insurance, the CMAR agrees to comply with all applicable provisions of 28 Tex. Admin Code § 110.110, "Reporting Requirements for Building or Construction Projects for Governmental Entities," as such provision may be amended, and as follows:

Workers' Compensation Insurance Coverage

1. Definitions:

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-

insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the CMAR's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in § 406.096) - includes all persons or entities performing all or part of the services the CMAR has undertaken to perform on the project, regardless of whether that person contracted directly with the CMAR and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2. The CMAR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CMAR providing services on the project, for the duration of the project.
3. The CMAR must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
4. If the coverage period shown on the CMAR's current certificate of coverage ends during the duration of the project, the CMAR must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

5. The CMAR shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (b) no later than seven days after receipt by the CMAR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
6. The CMAR shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
7. The CMAR shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the CMAR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
8. The CMAR shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
9. The CMAR shall contractually require each person with whom it contracts to provide services on a project, to:
 - (a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (b) provide to the CMAR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

- (c) provide the CMAR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (d) obtain from each other person with whom it contracts, and provide to the CMAR:
 - (1) a certificate of coverage, prior to the other person beginning work on the project; and
 - (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (f) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (g) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
10. By signing this contract or providing or causing to be provided a certificate of coverage, the CMAR is representing to the governmental entity that all employees of the CMAR who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CMAR to administrative penalties, criminal penalties, civil penalties, or other civil actions.

11. The CMAR's failure to comply with any of these provisions is a breach of contract by the CMAR which entitles the governmental entity to declare the contract void if the CMAR does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

129. Section 11.2, including all Subsections thereto, is hereby deleted in its entirety.

130. Section 11.3, including all Subsections thereto, is hereby deleted in its entirety.

131. Section 11.4 is hereby deleted in its entirety and a new Section 11.4 is hereby adopted to read as follows:

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The CMAR shall procure and pay for performance and payment bonds applicable to the work in the amount of the total bid price. The performance and payment bonds shall be issued in the form attached to this Addendum as Exhibits A and B. Other performance and payment bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the one-year warranty period after acceptance as described in the Contract Documents. In the event of a conflict between the bonding requirements contained in this Article 11 and any other provision contained in the Contract Documents or the applicable request for bids or sealed proposals the more stringent requirements and higher limits shall control.

§ 11.4.2 The performance, payment and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Owner, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the CMAR shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment and maintenance bonds and proof to establish adequate financial capacity for this Project upon Owner's request. In addition to the foregoing requirements, if the amount of the bond exceeds One Hundred Thousand Dollars (\$100,000) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and

admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand Dollars (\$100,000) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

§ 11.4.3 Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that the amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

§ 11.4.4 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the Agreement. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

§ 11.4.5 All bonds shall be originals. The CMAR 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 bonding company shall be provided.

§ 11.4.6 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the CMAR shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.7 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the Contract. If at any time during the continuance of the Contract, the surety of the CMAR's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the CMAR shall furnish to the satisfaction of the Owner within ten (10)

business days after notice to do so. In default thereof, the CMAR may be suspended, and all payment or money due to the CMAR withheld.

132. Section 11.5 together with Subsections 11.5.1 and 11.5.2 are hereby deleted in their entirety

133. Section 12.2.2 is hereby amended by deleting any reference to “one year” and replacing it with “two years.”

134. Section 12.2.2.3 in its entirety and replacing it with a new Section 12.2.2.3 to read as follows:

§ 12.2.2.3 The two-year period for correction of Work shall be extended by corrective Work performed by the CMAR pursuant to this Section 12.2.

135. Section 12.2 is hereby amended by adding a new Section 12.2.6 to read as follows:

§ 12.2.6 CMAR shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of two (2) years from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Agreement or defects in the Work.

136. Section 12.2 is hereby further amended by adding a new Section 12.2.7 to read as follows:

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by subcontractors of the CMAR as well as work done directly by employees of the CMAR. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate CMAR of Owner (unless CMAR is acting in such capacities). The cost to CMAR of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by CMAR.

137. Section 12.2 is also hereby amended by adding a new Section 12.2.8 to read as follows:

§ 12.2.8 If, however, Owner and CMAR deem it inexpedient to require the correction of work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum and the Guaranteed Maximum Price shall be made by agreement between CMAR and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due CMAR. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

138. Section 12.2 is hereby further amended by adding a new Section 12.2.9 to read as follows:

§ 12.2.9 CMAR'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.

139. Section 13.1 is hereby amended by deleting Section 13.1 in its entirety and replacing it with a new Section 13.1 to read as follows:

§ 13.1 The Contract Documents shall be governed by the laws of the State of Texas. The Contract is deemed performable entirely in Collin 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 Collin County, Texas.

140. Section 13.4.1 is hereby amended by deleting Section 13.4.1 in its entirety and replacing it with a new Section 13.4.1 to read as follows:

§ 13.4.1 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 CMAR shall use only materials in the Work, which meet the requirements of the Specifications. The Owner will contract for, independently of the CMAR, such inspection services, testing of construction materials engineering, and verification testing services necessary for the acceptance of the Work by the Owner. The CMAR shall give timely notice to the Architect and such other persons or entities selected by the Owner of

the need for such services. The CMAR 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 CMAR OF HIS RESPONSIBILITY WITH REGARD TO CONSTRUCTING THE WORK IN ACCORDANCE WITH THE CONTRACT 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 CMAR as provided in Section 13.4.2.

141. Section 13.4.2 is hereby amended by deleting Section 13.4.2 in its entirety and replacing it with a new Section 13.4.2 to read as follows:

§ 13.4.2 Owner shall pay for the initial testing performed by the engineering testing laboratory retained by the Owner on materials furnished and Work performed by CMAR. Retesting after failure to pass any test shall be at the sole expense of the CMAR. Payment for any and all Retests may be deducted and permanently withheld from the CMAR's total compensation unless the CMAR 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.

142. Section 13.5 is hereby amended by deleting Section 13.5 in its entirety and replacing it with a new Section 13.5 to read as follows:

§ 13.5 Payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

143. Article 13 is hereby amended by adding a new Section 13.6 to read as follows:

§ 13.6 CMAR'S RECORDS

CMAR agrees to furnish Owner such information as may be available in CMAR's files and records for the Project for the purpose of aiding Owner in establishing a depreciation

schedule for the Project or such portions thereof as Owner may determine.

144. Article 13 is hereby amended by adding a new Section 13.7 to read as follows:

§ 13.7 The CMAR shall certify in writing that no materials used in the work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The CMAR shall provide this written certification as part of submittals under the Section in the Contract Documents related to closing out the Project.

145. Article 13 is hereby amended by adding a new Section 13.8 to read as follows:

§ 13.8 The Architect may appoint an employee or other person to assist him during the construction. These representatives will be instructed to assist the CMAR in interpreting the Contract Documents; however, such assistance shall not relieve the CMAR from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed work not in accordance with the Contract Documents to be performed shall not prevent the Architect from insisting that the faulty work be corrected to conform to the Contract Documents and the CMAR shall correct same. If, however, Architect or Architect's Representative interprets the Contract Documents incorrectly and specifically directs CMAR to perform work in a manner that is not in accordance with the Contract Documents any corrective work required to cure the faulty work will require the preparation and approval of a Change Order.

146. Section 14.1.1 is hereby amended by deleting Section 14.1.1 in its entirety and replacing it with a new Section 14.1.1 to read as follows:

§ 14.1.1 The CMAR may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the CMAR, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work for or on behalf of the CMAR, for any of the following reasons:

147. Section 14.1.1.2 is hereby amended by inserting the word “or” at the end of the current line.

148. Section 14.1.1.3 is hereby amended by deleting “: or” at the end of the current line and inserting a period (.).

149. Section 14.1.1.4 is hereby deleted in its entirety.

150. 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 The CMAR may terminate the Contract if, through no act or fault of the CMAR, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work for or on behalf of the CMAR, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

151. Section 14.1.3 is hereby amended by deleting Section 14.1.3 in its entirety and replacing it with a new Section 14.1.3 to read as follows:

§ 14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the CMAR may, upon 7 days’ written notice to the Owner and Architect, 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.

152. Section 14.1.4 is hereby amended by deleting Section 14.1.4 in its entirety and replacing it with a new Section 14.1.4 to read as follows:

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the CMAR, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work for or on behalf of the CMAR, because the Owner has repeatedly failed to fulfill the Owner’s obligations under the Contract Documents with respect to matters important to the progress of the Work, the CMAR may, upon seven additional days’ written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

153. Section 14.2.2 is hereby amended by deleting Section 14.2.2 in its entirety and replacing it with a new Section 14.2.2 to read as follows:

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist the Owner may without prejudice to any other rights or remedies of the Owner and after giving the CMAR and the CMAR's Surety, if any, seven (7) days' written notice, terminate employment of the CMAR 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 CMAR.
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4.
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

154. Section 14.4.3 is hereby amended by deleting Section 14.4.3 in its entirety and replacing it with a new Section 14.4.3 to read as follows:

§ 14.4.3 In the case of such termination for the Owner's convenience, the CMAR 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.

155. Section 15.1.2 is hereby deleted in its entirety.

156. Section 15.1.3.1 is hereby amended by deleting Section 15.1.3.1 in its entirety and replacing it with a new Section 15.1.3.1 to read as follows:

§ 15.1.3.1 Claims by the CMAR must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims by the CMAR must be initiated by written notice to the Owner and Initial Decision Maker with a copy to the Architect if the Architect is not serving as the Initial Decision Maker.

157. Section 15.1.3.2 is hereby deleted in its entirety.

158. Section 15.1.4.1 is hereby amended by deleting Section 15.1.4.1 in its entirety and replacing it with a new Section 15.1.4.1 to read as follows:

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the CMAR shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare change orders and issue certificates for payment in accordance with the decision of the Initial Decision Maker and subject to the consent and agreement of the Owner.

1589 Section 15.1.5 is hereby amended by deleting Section 15.1.5 in its entirety and replacing it with a new Section 15.1.5 to read as follows:

§ 15.1.5 If the CMAR wishes to make a Claim for an increase in the Contract Sum, written notice as required by the Contract Documents shall be given to the Owner by the CMAR, and written notice received by the CMAR from Owner acknowledging the claim and authorizing construction activity to proceed, before the CMAR shall proceed to execute the construction activity giving rise to the claim; thence, the claim shall be addressed under the provisions of Section 15.2. Documentation of claims shall conform to the requirements of Article 7.

160. Section 15.1.6.2 is hereby amended by adding the following provision to the end of Section 15.1.6.2 to read as follows:

The CMAR 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 CMAR 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.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
3	2	3	2	4	3	3	2	3	3	2	2

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 Construction Manager'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 Contract Documents. In the event of such failure, no adjustment shall be made to the Guaranteed Maximum Price, and the Construction Manager 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.

No payment, compensation, or adjustment of any kind (other than the extensions of time provided for in the Contract Documents) shall be made to the Construction Manager for damages because of hindrances or delays from any cause other than intentional interference of the Owner, whether such hindrances or delays be avoidable or unavoidable, and the Construction Manager agrees that he will make no claim for

compensation, damages or mitigation of liquidated damages for any such delays.”

161. Section 15.2.1 is hereby amended by deleting Section 15.2.1 in its entirety and replacing it with a new Section 15.2.1 to read as follows:

§ 15.2.1 Claims by the CMAR against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Paragraphs 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred initially to the Initial Decision Maker for consideration and recommendation to the Owner. An initial recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or litigation of all Claims by the CMAR 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 recommendation having been rendered by the Initial Decision Maker. The Architect shall serve as the Initial Decision Maker, unless otherwise indicated in the Contract Documents.

162. Section 15.2.2 is hereby amended by deleting Section 15.2.2 in its entirety and replacing it with a new Section 15.2.2 to read as follows:

§ 15.2.2 The Initial Decision Maker will review Claims and within ten (10) days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the CMAR; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Initial Decision Maker is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

163. Section 15.2.4 is hereby amended by deleting the last sentence of Section 15.2.4 and replacing it with a new sentence to read as follows:

Upon receipt of the response or supporting data, if any, the Initial Decision Maker shall make a recommendation to the Owner regarding the claim or any part of the claim.

164. Section 15.2.5 is hereby amended by deleting Section 15.2.5 in its entirety and replacing it with a new Section 15.2.5 to read as follows:

§ 15.2.5 The Initial Decision Maker will render an initial recommendation regarding the claim, or indicating that the Initial Decision Maker is unable to make a recommendation. This initial recommendation shall (1) be in writing; (2) state the reasons therefore; and (3) notify the parties and the Architect,

if the Architect is not serving as the Initial Decision Maker, of any recommended change in the Contract Sum or Contract Time or both. Following receipt of the Initial Decision Maker's initial recommendation regarding a claim, the Owner and CMAR shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Section 15.3.

- 165. Section 15.2.6 is hereby deleted in its entirety.
- 166. Section 15.2.6.1 is hereby deleted in its entirety.
- 167. Section 15.2.7 is hereby deleted in its entirety.
- 168. Section 15.2.8 is hereby deleted in its entirety.
- 169. Section 15.2 is hereby amended by adding a new Section 15.2.9 to read as follows:

§ 15.2.9 Waiver of Lien. It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

- 170. Section 15.3 and all of its Subsections, including Sections 15.3.1 through 15.3.4, are hereby amended by deleting such Sections in their entirety and replacing such Sections with new Sections 15.3, 15.3.1, 15.3.2, 15.3.3 and 15.3.4 to read as follows:

§ 15.3 MEDIATION

§ 15.3.1 In the event that the Owner or the CMAR 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.

§ 15.3.2 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.

§ 15.3.3 In the event the Owner and the CMAR 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.

§ 15.3.4 Venue for any mediation or lawsuit arising under this contract shall be in Collin County, Texas.

171. Section 15.3 is hereby further amended by adding new Section 15.3.5 to read as follows:

§ 15.3.5 The parties shall share the mediator's fee equally. The mediation shall be held in Collin 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 Collin County, Texas.

172. Section 15.4 is hereby amended by deleting the entirety of Section 15.4 together with all of Sections 15.4.1, 15.4.1.1, 15.4.2, and 15.4.3 in their entirety.

173. Section 15.4.4 is hereby amended by deleting the entirety of Section 15.4.4.1 together with all of Sections 15.4.4.2, 15.4.4.3 in their entirety.

174. The *General Conditions of the Contract for Construction*, AIA Document A201-2017 is hereby further amended by deleting all references to arbitration from the Index and all other Sections, Subsections, paragraphs, provisions and/or phrases of such document.

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 Construction Manager 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 Prosper Town Charter and ordinances of Town, 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. Construction Manager 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 Construction Manager's income. Situs of this Contract is agreed to be Collin 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 Construction Manager) 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 Construction Manager 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 Construction Manager.

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

OWNER:

TOWN OF PROSPER, TEXAS

By: _____
Harlan Jefferson, Town Manager

Date Signed: _____

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM:

Terrence S. Welch, Town Attorney

CONSTRUCTION MANAGER:

POGUE CONSTRUCTION CO., LP

a Texas Limited Partnership, acting by and through Ben Pogue, LC, a Texas Limited Liability Company, General Partner



By: _____
Ben Pogue, President/Chief Executive
Officer of Ben Pogue, LC, a Texas Limited
Liability Company

Date Signed: 6/7/2022

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared Harlan Jefferson, Town Manager of the **TOWN OF PROSPER**, 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 Town's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ____
DAY OF _____, 2022.

Notary Public Denton County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF Collin

This instrument was acknowledged before me on the 7 day of June, 2022, by Ben Pogue, in his capacity as President/Chief Executive Officer of Ben Pogue, LC, a Texas Limited Liability Company, General Partner of **Pogue Construction Co., LP**, a Texas Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that Ben Pogue is the President/Chief Executive Officer of Ben Pogue, LC, a Texas Limited Liability Company, which is the General Partner of **Pogue Construction Co., LP**, a Texas Limited Partnership, and that he executed the same on behalf of and as the act of Ben Pogue, LC, General Partner of **Pogue Construction Co., LP**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 7
DAY OF June, 2022.



Maria Carolina Haylow
Notary Public 130232050 County, Collin
My commission expires 5/19/23