

TENDER, RELEASE, AND SUBSTITUTION AGREEMENT

This Agreement is entered this 16 day of April, 2024, by and between the City of San Antonio, State of Texas (the “City”), US Casualty and Surety Insurance Company (“US Casualty”), and Complex Contracting, Inc. d/b/a JC Stoddard Construction (“Contractor”).

RECITALS

WHEREAS, Longhorn Tejas Property Builders, LLC (“Longhorn”) and the City entered into contract (the “Original Contract”) dated October 14, 2021, for Longhorn to furnish all labor and material and perform all work related to the Perrin Homestead Historic Center (the “Project”) in accordance with the terms and provisions of the Original Contract, approved pursuant to Ordinance No. 2021-10-14-0778, including all contract documents forming a part of the Original Contract, for the benefit of the City; and

WHEREAS, on or about November 15, 2021, US Casualty issued a Performance Bond (the “Performance Bond”) and a Payment Bond (the “Payment Bond”), both numbered UCSX158X-1021, and in the penal sum of \$831,235.00 in connection with the Original Contract, naming Longhorn as the principal and the City as obligee; and

WHEREAS, by letter dated April 7, 2023, the City issued correspondence declaring Longhorn in default, purporting to terminate the Original Contract with Longhorn, and making demand upon US Casualty under its Performance Bond to complete work on the Project in accordance with the Original Contract; and

WHEREAS, Contractor has caused an investigation to be made regarding the status of the Project, including the nature and extent of the work and materials performed and supplied by the City as well as the work and materials required to perform the work as required under the Original Contract; and

WHEREAS, Contractor has agreed to perform all of the work remaining to be done under the Original Contract and otherwise fulfill all the remaining responsibilities and obligations of Longhorn under the Original Contract, unless expressly excluded in this Agreement or in Exhibits A and/or B to this Agreement (the “**Work**”), in strict compliance with this Agreement and the Original Contract, including all drawings, specifications, forms, addenda, and documents referenced therein as forming part of the Original Contract, as well as any modifications to the Original Contract, but not including Longhorn’s Schedule of Values, which is replaced by Contractor’s Proposal (attached hereto as **Exhibit A**) and Contractor’s Bid Spreadsheet (attached hereto as **Exhibit B**) (collectively, the “**Contract Documents**”), for the total amount of \$1,689,017.00; and

NOW, THEREFORE, in consideration of the agreements and undertakings hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy therefore being hereby acknowledged, the parties agree as follows:

AGREEMENTS

I. THE CITY AND US CASUALTY COVENANT AND AGREE

1. Tender of Contractor. US Casualty tenders to the City the services of Contractor as the completion contractor responsible for completion of the Work. the City accepts US Casualty’s tender of Contractor as the completion contractor and by this Agreement contracts directly with Contractor for completion of the Work as provided herein.

2. Accounting for Contract Balance. The City represents that as of the date of this Agreement, the amount held by the City that is available to complete the Original Contract is as follows:

Original Contract Sum:	\$	831,235.00
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Approved Change Orders:	\$	35,422.46
Adjusted Contract Sum:	\$	866,657.46
Amount paid to Longhorn:	\$	363,676.48
Contract Balance, including retainage, held by the City available for completion (the "Contract Balance"):	\$	502,980.98
US Casualty's Tender Payment (the "Tender Payment"):	\$	831,235.00
Funds Required to Complete the Project (the "Completion Contract Sum"):	\$	1,689,017.00
Project Shortfall (City's Responsibility)	\$	354,801.02

US Casualty reserves the right to verify the accuracy of the Contract Balance set forth hereinabove.

US Casualty's sole remedy in the event that the Contract Balance is inaccurate is reformation of the Contract Balance in the proper amount. Contractor represents and warrants that the Completion Contract Sum is sufficient to complete the Work under the Original Contract. City agrees to devote the Completion Contract Sum to completion of the Work.

3. US Casualty's Tender Payment. Within fifteen (15) days from the execution of this Agreement by all parties, US Casualty shall make the Tender Payment to the City by check, wire, or ACH.

4. The City's Release of US Casualty. The City accepts US Casualty's tender of payment above and of Contractor as completion contractor as full and complete satisfaction and discharge of any and all obligations or liability which US Casualty now has or might ever have in the future under the Performance Bond or otherwise for any claims, demands, losses, or damages of any kind that the City has or may have been entitled to assert against US Casualty arising out of the Original Contract or Longhorn's default, and neither the City nor Contractor shall look to US Casualty for any further payment under any circumstances, except as may be allowed pursuant to Paragraph 5. The City acknowledges and confirms that Contractor's work proposed under its

Proposal attached as Exhibit A is for completion of the Original Contract and all required Work thereunder, unless expressly excluded therein. Any additional changes or amendments to the Work are solely between the City and Contractor, and will be made by change order according to the City's general conditions. The City will be solely responsible for any amounts owed to Contractor for completion of the Work in excess of the Tender Payment.

5. US Casualty's Payment Bond Obligations. US Casualty acknowledges and agrees that its obligations under the Payment Bond shall remain in full force and effect in accordance with payment related claims by subcontractors, material providers, or other providers of Longhorn's on the Project pursuant to the Payment Bond's terms and applicable statutes with respect to work performed by Longhorn prior to termination, if any. It is expressly understood and agreed between US Casualty and the City that the scope and coverage of the Payment Bond is limited to valid and perfected claims for payment of subcontractors and suppliers of Longhorn for labor or materials supplied to the Project through the City, and that US Casualty's Payment Bond is not for the benefit of Contractor or any of its subcontractors, materialmen or suppliers for any labor or materials they provide. It is understood, as detailed below, that Contractor will procure a separate payment bond for its completion of the work. Any payments made by US Casualty shall be credited dollar for dollar against the penal sum of the respective Payment Bond. Nothing in this Agreement constitutes a waiver of such penal sum or an increase in the liability of US Casualty under the Payment Bond or Performance Bond.

6. Assignment of Rights. The City hereby assigns, transfers and subrogates to US Casualty all of its right, title and interest in and to all of its rights and causes of action against Longhorn.

II. THE CITY AND CONTRACTOR COVENANT AND AGREE

7. **Work to be Performed.** Contractor assumes responsibility for all of the obligations of Longhorn under the terms and conditions of the Contract Documents, unless expressly excluded herein or exhibits hereto. Contractor, as the completion contractor through tender and substitution, shall furnish all supervision, labor, tools, equipment, materials and supplies necessary to perform and to complete all of the Work remaining to be performed under the Contract Documents for the completion of the Project. The correction of any deficient or defective work performed by Longhorn discovered after the execution of this agreement may result in an increase to the Completion Contract Sum, subject to a change order according to the City's general conditions. Contractor shall also warrant all of the Work it performs on the Project in accordance with the Original Contract, unless provided otherwise herein. Contractor does not warranty any work performed by Longhorn. Contractor shall not be obligated for any amounts owed to subcontractors or suppliers of Longhorn with respect to labor or material they provided to the Project through Longhorn prior to the date of this Agreement. The sole remedy for subcontractors or suppliers of Longhorn shall be a claim against the existing Payment Bond issued by US Casualty, numbered UCSX158X-1021. It is understood that subcontractors or suppliers of Longhorn shall have no claim against any subsequent performance bond procured by Contractor.

8. **Contractor Substituted for Longhorn.** Contractor agrees it is substituted for Longhorn in the Original Contract such that Contractor's relationship to the City is the same as if Contractor was the original contracting party with the City in lieu of Longhorn, except as specified herein. Contractor agrees it will perform all requirements of the Original Contract, subject to the "CLARIFICATIONS" contained in the letter proposal attached as Exhibit A, which is incorporated

herein for all purposes. Repair or replacement of the parking lot is excluded from the agreed scope of work unless subsequently added by change order.

9. Investigation of Remaining Work by Contractor. Contractor represents and warrants that (i) it is experienced and skilled in the construction of the type described in the Contract Documents; (ii) that it has examined and read all Plans, Specifications, Approved Change Orders, Instructions to Bidders, General Conditions, Supplementary General Conditions, Addenda, attachments to Addenda and other Contract Documents, including the means and methods they specify for performance of the Work; (iii) that it has inspected the site of the Project and any materials or equipment left by Longhorn; (iv) that it has by careful examination informed and satisfied itself as to the extent and character of the Work; (v) that it has informed and satisfied itself with respect to any reasonably ascertainable conditions affecting the Work and the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract Documents; and (vi) that it has done all of this independently of any representations by the City, US Casualty, Longhorn, or any of their employees, agents, consultants or representatives. Contractor acknowledges that no warranties or representations, expressed or implied, have been made to it by the City, US Casualty, or Longhorn with respect to the Work or the Contract Documents.

10. Right to Use Assets Abandoned by Longhorn. The City agrees to give Contractor the right to use any of the equipment, materials, appurtenances, furnished or supplied by Longhorn (if any) which may be stored on or about the project sites or which may have been fabricated for use in connection with the Original Contract whether or not physically on the Project site to the extent such assets are now owned by the City and agrees not to object to Contractor's use of any of the equipment, materials, appurtenances, furnished or supplied by Longhorn (if any) which may

be stored on or about the Project site or which may have been fabricated for use in connection with the Original Contract, whether or not physically on the Project site, subject to Contractor's assurance of the quality of such materials as stated above.

11. Commencement and Completion of the Work. Contractor is executing this Agreement on the date above written and, contemporaneously with the execution of this Agreement, Contractor is furnishing to the City properly executed performance and payment bonds as required under the Original Contract. After full execution of this Agreement and the requisite bonds are provided, the City shall issue a notice to proceed to Contractor. Within ten (10) days of Contractor's notice of proceed, Contractor shall commence its completion of the Work. Contractor shall complete the Work in accordance with the Schedule and all of the Work to be performed under this Agreement and the Original Contract shall be completed in **325 calendar days** of the notice to proceed.

12. Permits. All permits for work, either from US Casualty or other agencies will be reinstated and current when the notice to proceed is issued. Copies of all approved permits will be supplied by the City to Contractor at the time the notice to proceed is issued. If for any reason this cannot be accomplished, then a change order will be issued to extend contract times for any delays to Contractor's schedule because of lack of permits.

13. Completion Contract Sum. The City agrees that the Completion Contract Sum is allotted for completion of the Work by Contractor, and consists of the amount of \$1,689,017.00 as summarized by the Contractor's Proposal (Exhibit A), and further itemized in the Contractor's Bid Spreadsheet, attached as Exhibit B. The City agrees to pay Contractor a total of \$1,689,017.00 for Contractor's completion of the Work, subject to any adjustments made in accordance with the Contract Documents.

14. Payments to Contractor by the City. The City shall pay Contractor the Completion Contract Sum as earned by Contractor pursuant to and in accordance with the procedures set forth in the Contract Documents (including retainage) and in accordance with Contractor's Proposal attached hereto as Exhibit A. In no event shall the City withhold any of the Contract Balance from Contractor on account of any claims, liens, suits or demands by any person or entities furnishing or alleging to have furnished labor, materials or other services to the Project through Longhorn.

15. Completion Contract Sum is Total Compensation. Contractor acknowledges that the Completion Contract Sum will be Contractor's total compensation for the full and complete performance by Contractor of all of the Work required by the Contract Documents, including the furnishing of all labor, materials, equipment, supervision, insurance, bonds, tools, taxes, overhead, profit, and each and every item of expense necessary to complete the Work in compliance with all terms and conditions of the Original Contract, Instruction to Bidders, Terms and Conditions, General Conditions, Supplementary General Conditions, Plans, Specifications, Approved Change Orders, Allowances, Alternates, Addenda, Attachments to Addenda, and all documents referenced therein, and for Contractor's payment of all obligations incurred in, or applicable to performance of all Work.

16. Warranty of Contractor's Work in Place. Contractor agrees to warrant all Work it performs under the Original Contract in accordance with the Contract Documents, but does not warrant any work previously performed by Longhorn. Contractor agrees it is responsible for any repairs or indemnifying the City against any repairs which may become necessary as a result of Contractor's defective workmanship or materials as may be required by the Contract Documents.

17. Performance and Payment Bonds from Contractor. Contemporaneously with the execution of this Agreement, Contractor is providing to the City a new performance bond and payment bond pursuant to the requirements of the Contract Documents in a form approved by the City. The surety for Contractor must be a commercial surety company currently listed with the U.S. Department of the Treasury, acceptable to the City, and licensed to conduct business in the State of Texas. The performance bond and payment bond shall name the City as obligee.

18. Insurance. Contractor shall provide and maintain such types and amounts of insurance coverages as are required by the Contract Documents and by local, state and federal law, including workers' compensation, general liability insurance, and builder's risk. Certificates of Insurance, or other written proof satisfactory to the City of compliance with this paragraph, are being furnished to the City on the effective date of this Agreement and before any Work is performed under the Contract Documents. Such proof of insurance shall provide for fifteen (15) days written notice to the City prior to the cancellation or modification of any of the coverages required under the Contract Documents or by law. The City shall be named as additional insured under Contractor's insurance policies to the extent required by the Contract Documents. If any insurance policies provided by Contractor pursuant to this paragraph require an endorsement for continued coverage where there is a waiver of subrogation, Contractor shall cause such policy to be so endorsed. To the extent that any provision of this section conflicts with the City's General Conditions, the General Conditions shall control.

19. Notice. Any notice required between Contractor and the City under the terms of the Contract Documents shall be deemed made if either party mails such notice by first class mail, postage prepaid, as follows:

As to Contractor:

JC Stoddard Construction
Attn: Trichia Stoddard Ramirez
12445 Old O'Connor Road
San Antonio, Texas 78233

As to the City:

The City of San Antonio
Finance Department
Attention: Purchasing Division Construction
Public Works Department
Attention: Rodney Dziuk
P.O. Box 839966
San Antonio, Texas 78205

With a copy to:

Ray Rodriguez
Orlando.Rodriguez@sanantonio.gov
David Harris
David.Harris2@sanantonio.gov
203 S St. Mary's Street, 2nd Floor
San Antonio, Texas 78205

III. All Parties Covenant and Agree

20. Contractor as Independent Contractor. Contractor is an independent contractor and is not an agent, servant, partner, or joint venturer of US Casualty or the City.

21. US Casualty as Surety. US Casualty's actions shall forever be construed and considered as those of a surety and not of a contractor. US Casualty is not a party to, and has no obligations with respect to, the agreement between the City and Contractor for completion of the Original Contract.

22. US Casualty's Reservation of Rights Against Longhorn and Indemnitors. Nothing contained in this Agreement constitutes a waiver by US Casualty of any rights which it may have to seek reimbursement or indemnity from Longhorn or any indemnitors under US

Casualty's General Agreement of Indemnity with respect to the payment which US Casualty is making pursuant to this Agreement or in connection with losses of any kind incurred by US Casualty as a result of having issued either the Performance Bond or Payment Bond. It is expressly understood and agreed that US Casualty is reserving all rights, claims and causes of action which it now has or which may arise in the future to seek reimbursement or indemnity from Longhorn or any indemnitors with respect to any and all losses of any kind incurred by US Casualty as a result of having issued the Performance Bond.

23. No Third-Party Beneficiaries. Nothing contained in this Agreement shall create any third-party beneficiaries nor confer any benefit or enforceable rights under this Agreement upon any person or entity other than the parties to this Agreement.

24. Remedies; Governing Law; Venue. The remedies provided in this Agreement are nonexclusive and cumulative in nature unless otherwise stated herein. This Agreement shall be interpreted and governed according to the laws of the State of Texas. This Contract is performed in Bexar County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Bexar County, Texas.

25. Severability. In the event that any term or provision of this Agreement, or any portion thereof, shall be determined by a court of competent jurisdiction to be void, invalid or unenforceable for any reason whatsoever, the remaining terms and provisions shall remain in full force and effect as though the void, invalid or unenforceable provision was deleted therefrom.

26. Merger; Complete Agreement. This written Agreement, together with any supplemental provisions or addenda attached to the Agreement, constitutes the entire agreement between and among the parties hereto regarding the issues which are the subject of this Agreement. Any prior understandings or agreements, and any representations made by either party to the other,

not included or specifically addressed in this Agreement, are deemed to be merged herein and not binding as to the parties as this Agreement constitutes the complete understanding and agreement between the parties. This Agreement is for the sole benefit of the parties hereto, their respective successors and assigns, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement.

27. Construction of Agreement. The parties hereto acknowledge that they have read, understand and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions, and as to the effect of all the provisions of this Agreement, and agree to the enforcement of any and all of these provisions and execute this Agreement with full knowledge of these provisions. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or constructing the provisions shall not apply the presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. The headings of the subsections of this Agreement are inserted for convenience only and shall not control or affect the meaning, construction, or effect of this Agreement, or any provisions hereof.

28. Counterparts. This Agreement may be executed in multiple counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

29. Attorneys' Fees. The Parties hereto expressly agree, in the event of litigation, all Parties waive rights to payment of attorneys' fees that otherwise might be recoverable, pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law or any other provision for payment of attorney's fees.

30. No Admission of Liability. This Agreement does not constitute an admission of liability on the part of any party.

31. Capacity. Each party represents and warrants to the other parties that the person executing this Agreement on its behalf is duly authorized to execute the same as the act of that party.

32. Effective Date. The Effective Date of this Agreement shall be the date upon which the last party to this Agreement executes this Agreement and sends a facsimile copy of this Agreement's signature pages to all other parties confirming and advising the other parties of the Effective Date.


[signature page to follow]

IN WITNESS WHEREOF, the parties have
executed this Agreement effective as indicated
below.

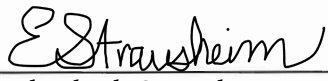
THE CITY OF SAN ANTONIO

By: _____
Name: _____
Title: _____
Date: _____

JC STODDARD CONSTRUCTION

By:  _____
Name: Trichia Stoddard Ramirez
Title: Vice President
Date: 04/25/2024

**US CASUALTY AND SURETY INSURANCE
COMPANY**

By:  _____
Name: Elizabeth Strausheim
Title: Claims Manager
Date: 05/17/2024