



SOLICITATION/RFP INFORMATION REQUIREMENTS

REQUEST FOR PROPOSALS

CONSTRUCTION MANAGER-AT-RISK  
(One Step Process)

FOR

**CARTHAGE ISD 2023 Bond Projects  
RFP 23001**

FOR THE

CARTHAGE INDEPENDENT SCHOOL DISTRICT  
CARTHAGE, TEXAS

# CARTHAGE INDEPENDENT SCHOOL DISTRICT

## CONSTRUCTION MANAGER AT RISK

### REQUEST FOR PROPOSAL – RFP 23001

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**I.**  
**ADVERTISEMENT & NOTICE TO PROPOSERS**  
**CONSTRUCTION MANAGER at RISK**

Carthage Independent School District (the "District" or "Owner") is requesting Proposals for Construction Manager at Risk, One Step Process (per Texas Government Code, Chapter 2269, Subchapter F), for construction and renovation of the Carthage ISD 2023 Bond Projects ("Project"). The estimated Construction Budget for the Project is noted below. Proposals will be received at the Carthage Independent School District Purchasing Department, #1 Bulldog Dr, Carthage, Texas 75633. Each Proposal shall be identified as: **"Proposal for Construction Manager at Risk, RFP 23001."** **Proposals shall be received until 10:00 a.m. (local time), December 8, 2022 (the "Deadline"). Proposals received after the Deadline may be returned unopened. Fax or emailed responses will NOT be considered.**

The procurement method is CONSTRUCTION MANAGER AT RISK ("CMAR"), ONE STEP PROCESS.

Failure to have a Proposal submitted by the above Deadline may result in the Proposal NOT being considered. Proposals shall be opened and read aloud upon the Deadline at the Purchasing Department, #1 Bulldog Dr, Carthage, Texas 75633.

A Proposal guarantee in the form of a cashier's check, certified check or bid bond, payable to Carthage ISD, in the amount of 5% of the largest possible total for the Proposal amount submitted, must accompany each Proposal. For Proposals submitted electronically, the original Proposal guarantee must be received prior to the Proposal opening. Please mail or deliver the Proposal guarantee to Carthage ISD Purchasing Department, #1 Bulldog Dr, Carthage, Texas 75633, Attn: Chief Financial Officer.

Interested CMARs may obtain a copy of the RFP 23001 from the Public Purchase website at [www.publicpurchase.com](http://www.publicpurchase.com).

**RFP 23001 – Construction and Renovation of Multiple Campuses.** The District intends to award this project to one Construction Manager.

**Project #1 Objective** – The project includes renovations to Baker Koonce Intermediate, New Construction to the Baseball and Softball Complex at Carthage High School, and Carthage Junior High School Roof replacement.

Scope of work includes interior refresh, HVAC upgrades, roofing replacements as well as construction of new concessions / restrooms, a new locker room facility, covered grandstand bleachers, and associated site work. The tentative bid date is the 1<sup>st</sup> week of April 2023 and completion date will be end of Sep 2024 -approximately 16 months construction duration.

**Estimated Construction Budget - \$ 28,500,000**

The Construction Budget encompasses all construction costs, including all contingencies, construction manager fees, bonding and insurance and excludes the fee for architectural services.

**Architect** – Corgan – Dallas, Tx

**PRE-PROPOSAL MEETING**

A pre-proposal meeting will be held at Carthage ISD Administration Building at 9:00 AM Central Time, Thursday, December 1<sup>st</sup>, 2022. The pre-proposal meeting is not mandatory, but it is highly encouraged that the offerors walk the property.

**CRITERIA AND WEIGHTS FOR SELECTION**

Per Government Code Sections 2269.055 and 2269.253, the District will consider the following selection criteria and corresponding weights when evaluating the proposals. Each criterion will be scored by awarding available points to proposers commensurate with their relative standing against other proposers. This process necessarily involves subjective judgements:

| <b>FINANCIAL</b>  |            |
|---|------------|
| Financial Strength  | 100 points |
| <b>EXPERIENCE OF COMPANY</b>  |            |
| What is the respondent's litigation record?   | 30 points  |
| Is the respondent experienced in the East Texas construction market   | 30 points  |
| Has the respondent constructed educational projects of similar size and complexity?   | 30 points  |
| Does the respondent have prior experience with Carthage ISD and if so, was it positive?   | 30 points  |
| <b>EXPERIENCE AS CMAR</b>   |            |
| Does it appear the respondent will work effectively in a team environment with the Owner and Architect during the preconstruction, bidding, and construction phases of the project? | 30 points  |
| What is the quality of the cost estimates provided by the respondent?   | 50 points  |
| What is the quality of the schedule and action plan to complete projects on schedule?   | 100 points |
| <b>PERSONNEL</b>  |            |
| Does the team of personnel proposed by the respondent appear to be qualified as necessary to meet the needs of this project?  | 150 points |
| <b>COST</b>   |            |
| Price   | 250 points |
| <b>INTERVIEWS</b>   |            |
| Interview (if applicable)   | 200 points |

The District reserves the right to reject, in its sole discretion, any or all proposals submitted in response to this RFP 23001, or any part of any proposal and/or waive technicalities. The District reserves the right to seek clarification and/or request additional information. The District will award a contract, if any, that serves the best interests of the District. The District's waiver of any deviations in any proposal will not constitute a modification of this RFP 23001 and will not preclude the District from asserting all rights against CMAR for failure to fully comply with all terms and conditions of this RFP 23001. Should a proposal contain conflicting terms, the District reserves the right to enforce the term or terms in such proposals that it determines to be in the best interest of the District, and CMAR agrees to be bound by the terms it has proposed that are most favorable to the District. All proposals in response to this RFP 23001 become the property of the District and may be subject to release to any requestor under the provisions of the Texas Public Information Act, Chapter 552 of the Texas Government Code, and Attorney General Opinions issued under that statute. If CMAR believes any portion of its proposal is excepted from release, it should clearly mark such portion as "CONFIDENTIAL," and provide written legal authority as to why CMAR believes such information should not be released.

The District may re-issue another RFP for the services as described in this RFP or similar services at any time.

**Per Section 44.043, of the Education Code, (b) notwithstanding any other provision of this chapter, a school district:**

1. May not consider whether a vendor is a member of or has another relationship with any organizations; and
2. Shall ensure that its Proposal specifications do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

For additional information, see the Proposal Instructions in this RFP 23001.

The Board of Trustees, for the purpose of complying with Section 2258, Subchapter B of the Texas Government Code for all public contracts, has adopted the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as the published rates for the District. These rates are listed on the following website: <https://wdol.gov/dba.aspx>. The applicable schedule is attached hereto as part of the modified AIA contract forms.

**IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO PAY THE APPROPRIATE RATE OR HIGHER ON THE CONSTRUCTION PROJECT OR BE SUBJECT TO THE \$60 DAILY PENALTY AS SET FORTH IN SECTION 2258.023 OF THE TEXAS GENERAL GOVERNMENT CODE.**

**NO ISRAEL BOYCOTT VERIFICATION:** The 85<sup>th</sup> Texas Legislature enacted House Bill 89 (codified in chapter 2270 of the Texas Government Code). As of September 1, 2017, state law requires written verification by a for-profit company before it enters a contract with a local government (*i.e.*, a school district) that verifies that the company does not boycott Israel and will not boycott Israel during the term of the contract. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or

entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR A FOREIGN TERRORIST ORGANIZATION:** In accordance with Texas Government Code, Chapter 2252, Subchapter F, Owner is prohibited from entering into a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller or the State Pension Review Board under Texas Government Code Sections 806.051, 807.051, or 2252.153. By execution of a contract with the Owner, CMAR certifies to Owner that it is not a listed company under any of those Texas Government Code provisions. By submitting a proposal, CMAR voluntarily and knowingly acknowledges and agrees that any resulting contract shall be null and void should facts arise leading the Owner to believe that the CMAR was a listed company at the time of this procurement.

**CONFLICT OF INTEREST:** Any person or entity, as well as agents of such persons, who contracts or seeks to contract with the Owner for the sale or purchase of property, goods, or services are required to file a Conflict-of-Interest Questionnaire with the Owner. A Conflict-of-Interest questionnaire is included in this RFP. The completed form must be returned as part of your proposal submittal.

**CERTIFICATE OF INTERESTED PARTIES:** Effective January 1, 2016, Texas governmental entities must comply with the "Disclosure of Interested Parties" mandated by Texas HB 1295, as implemented by the Texas Ethics Commission. Briefly stated, all contracts requiring an action or vote by the governing body of the entity or agency before the contract may be signed (regardless of the dollar amount) or has a value of at least \$1 million will require the on-line completion of Form 1295 "Certificate of Interested Parties," per Texas Government Code § 2252.908. Form 1295 is also required for any and all contract amendments, extensions or renewals made after January 1, 2016. Therefore, CMAR will be required to create, electronically file, and present such Form 1295 to the District using the Texas Ethics Commission's online filing application at final execution of any contract with the District.

**WAIVER OF CLAIMS: BY TENDERING A RESPONSE TO THIS RFP, THE CMAR ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THE REQUIREMENTS FOR SUBMITTING A PROPOSAL, AND THE PROCESS USED BY THE OWNER FOR SELECTING A CMAR. FURTHER, BY SUBMITTING A PROPOSAL, THE CMAR FULLY, VOLUNTARILY AND UNDERSTANDINGLY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST OWNER, ARCHITECT AND ANY OF THEIR TRUSTEES, OFFICERS, AGENTS AND/OR EMPLOYEES THAT COULD ARISE OUT OF THE EVALUATION, REJECTION OR RECOMMENDATION OF ANY PROPOSAL SUBMITTED IN RESPONSE TO THIS RFP.**

## II. PROPOSAL INSTRUCTIONS

### PART - GENERAL

#### 1.1 RECEIPT AND OPENING OF PROPOSALS

- A. Carthage Independent School District (hereinafter referred to as the "Owner" or "District"), invites Proposals for services of a CMAR. This is a one-step selection process.
  
- B. **SUBMISSION OF PROPOSALS:** Proposals must be submitted on a form identical to that furnished in the Project Manual. Proposals may be submitted electronically online to [www.publicpurchase.com](http://www.publicpurchase.com) or six (6) hard copies of Proposal documents must be submitted to the District at  
Carthage Independent School District  
Attn: Chief Financial Officer  
#1 Bulldog Dr,  
Carthage, Texas 75633

PROPOSALS SHALL BE SUBMITTED NO LATER THAN THE FOLLOWING TIME AND DATE:

**December 8, 2022, AT 10:00 AM**

PROPOSALS THAT ARE SUBMITTED ELECTRONICALLY SHOULD IDENTIFY "**PROPOSAL FOR CONSTRUCTION MANAGER AT RISK, RFP 23001**" IN THE DOCUMENT NAME OF ANY UPLOADED DOCUMENT. IF MAILED OR HAND DELIVERED, PROPOSALS SHOULD BE IDENTIFIED BY TYPING THE SAME LANGUAGE ON THE OUTSIDE OF AN OPAQUE ENVELOPE. **FAXED OR E-MAILED PROPOSALS SHALL NOT BE CONSIDERED.**

ALL PROPOSALS MUST BE RECEIVED IN THE PURCHASING DEPARTMENT OF CARTHAGE INDEPENDENT SCHOOL DISTRICT BEFORE OPENING DATE AND TIME.

- C. **LATE PROPOSALS:** Owner is not responsible for lateness of mail, carrier, etc. and time/date stamp clock in the District's office shall be the official time of receipt.
  
- D. **OPENING:** By law, proposals will be opened and the following will be read aloud:  
Name of firm responding  
Fees or prices as requested
  
- E. **LOCATION OF PROPOSAL OPENING:** Proposals will be publicly opened on the date and at the time indicated previously. Openings will be at the following location:

CARTHAGE Independent School District  
#1 Bulldog Dr, Carthage, Texas 75633

- F. NO ORAL, telegraphic, telephonic or facsimile transmitted proposal(s) will be considered.

1.2 METHOD OF PROPOSAL

- A. DOCUMENTS: If submitting hardcopy, each CMAR must submit **six (6)** complete sets of Proposal Documents.
- B. ETHICS: The CMAR shall not accept or offer gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the Owner.
- C. CONFLICT OF INTEREST: No public official shall have a personal interest in this Proposal or any resulting contract, and any substantial interest or conflict shall be disclosed in accordance with Local Government Code Title 5, Subtitled C, Chapters 171 and 176.

**Notice to Proposers: Conflict of Interest Questionnaire Required by Chapter 176 of the Texas Local Government Code**

Any person or entity, as well as agents of such persons, who contracts or seeks to contract with the Owner for the sale or purchase of property, goods, or services (hereafter referred to as Vendors) are required to file a Conflict of Interest Questionnaire with the Owner. Each person or entity that contracts with the Owner is responsible for complying with all applicable disclosure requirements. Forms and instructions are included in the RFP package.

- D. **INDEMNIFICATION: TO THE FULLEST EXTENT PERMITTED BY LAW, SUCCESSFUL CMAR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE ARCHITECT, AND ALL THEIR TRUSTEES, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES INCLUDING BUT NOT LIMITED TO, ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM CONSTRUCTION OF THE PROJECT, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR OR SUBCONTRACTORS OR ANYONE ELSE FOR WHOSE ACTS THEY MAY BE LIABLE, UNLESS SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED SOLELY BY A PARTY INDEMNIFIED HEREUNDER;** provided and except, however, that this indemnification provision shall not be construed as requiring the selected CMAR to indemnify or hold harmless a registered architect, a licensed engineer or agent, servant, or employee of a registered architect or licensed engineer, from liability for personal injury, death, property injury, or any expense that arises from personal injury, death or property damage, that is caused by or results from (1) defects in plans, designs or specifications prepared, approved or used by the architect or engineer; or, (2) negligence of the architect or engineer in the rendition or conduct of professional duties called for arising out of the construction contract and the plans, designs or specifications that are a part of the construction contract.
- E. COMPLIANCE: The selected CMAR and its proposal must comply with all Federal, State, County and local laws, including local building codes. The selected CMAR shall not hire nor work any illegal alien.



- F. **WAIVER OF CLAIMS: BY TENDERING A PROPOSAL TO THIS REQUEST FOR PROPOSAL, THE CMAR ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THE REQUIREMENTS FOR SUBMITTING A PROPOSAL, AND THE PROCESS USED BY OWNER FOR SELECTING A CMAR. FURTHER, BY SUBMITTING A PROPOSAL, THE CMAR FULLY, VOLUNTARILY AND UNDERSTANDINGLY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST OWNER, ARCHITECT OR ANY OF THEIR TRUSTEES, OFFICERS, AGENTS AND/OR EMPLOYEES THAT COULD ARISE OUT OF THE ADMINISTRATION, EVALUATION, RECOMMENDATION OR SELECTION OF ANY PROPOSAL SUBMITTED IN RESPONSE TO THIS REQUEST FOR PROPOSAL.**
- G. Unless a prevailing wage schedule is attached hereto, the Owner, for the purpose of complying with Section 2258, Subchapter B of the Texas Government Code for all public contracts, has adopted prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as the published rates of the District These rates are listed on the following website: <https://beta.sam.gov/>. **IT IS THE RESPONSIBILITY OF THE CMAR TO ASSURE THAT THE APPROPRIATE RATE OR HIGHER ON THIS PROJECT OR BE SUBJECT TO PENALTY AS SET FORTH IN SECTION 2258.023 OF THE TEXAS GOVERNMENT CODE.**
- H. Owner reserves the right to require all CMARs to submit statements as to previous experience in performing comparable work. The competency and responsibility of CMARs and their proposed contractors and subcontractors will be considered in making an award.
- I. Each CMAR agrees in submitting its proposal that no modifications, withdrawals or cancellations may be made to the proposal during the forty-five (45) days following the time and date the Owner has ranked and selected CMARs.
- J. Owner reserves the right to issue Addenda at any time prior to the proposal opening. All such Addenda become, upon issuance, an inseparable part of this RFP 23001
- K. Owner is qualified for exemption from State and Local Sales Tax pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Applicable State Sales Taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts.
- L. It is the intention of the Owner to award the work within 45 days from the date CMARs are ranked and selected by the Owner. Time is of the essence, and the CMAR is expected to enter a contract with Owner in substantially the form presented in this RFP 23001 without material deviation. CMAR is encouraged to review those Contract Documents. The Owner may reject any or all proposals and/or abandon these Projects, or any of them, if it determines that any of these Projects would not be in the best interest of the District.
- M. Awards shall be made with reasonable promptness to the CMAR(s) whose proposal best conforms to this invitation and will be the most advantageous to the

Owner based on criteria and corresponding weights set forth herein at Section 1.9. Price is a single factor to be considered. Award(s) may be made to CMAR(s) other than the CMAR that submits the lowest priced proposal.

### 1.3 PREPARATION OF PROPOSAL

- A. Make Proposal in name of principal and if co-partnership, give names of all parties.
- B. Give CMAR's complete physical address and email address.
- C. If proposal(s) are submitted by an agent, provide satisfactory evidence of agency authority.
- D. Fill in all prices in both words and figures.
- E. Submit Proposal as noted in Section 1.1.B above. No fax or emailed responses will be considered.
- F. If forwarded by mail, enclose sealed envelope containing proposal in another envelope addressed as indicated in Section 1.1.B above.
- G. Proposal(s) must be received prior to opening time. **ANY PROPOSAL RECEIVED AFTER THE DEADLINE MAY BE RETURNED UNOPENED AND BE CONSIDERED VOID AND UNACCEPTABLE.**
- H. Qualification Statements: Along with the requirements identified above, each CMAR shall complete and include an AIA-A305 Contractors Qualification Statement, or similar document.

### 1.4 PROPOSAL/PROPOSAL SECURITY

- A. Each individual proposal package submitted must be accompanied by Proposal Security made payable to Owner in an amount of five percent (5%) of the fee being proposed based on the total estimated Construction Budget. Proposal Security shall be in the form of a Cashier's Check or a Proposal (Bid) Bond, duly executed by CMAR as principal and having as surety thereon, a corporate surety company duly authorized and admitted to do business in the State of Texas and licensed by the State of Texas to issue such bond, as a guarantee that the CMAR will enter into a Contract in the form presented and execute required Performance and Payment Bonds within ten (10) days of the District's execution of Contract.
- B. Each proposal must be accompanied by information establishing that the agent signing the bond is authorized to write the bond in the amount requested, and if applicable, that reinsurance requirements, have been met, including limits and ratings or other evidence of company solvency.

CMAR must demonstrate to Owner that he can secure required bonds, issued by a corporate surety company authorized and admitted to do business in the State of Texas and licensed in the State of Texas to issue such bond, which bonds shall be written in the form acceptable to the Owner.

## 1.5 WITHDRAWAL OR REVISION OF PROPOSAL

- A. Proposal may be withdrawn or revised prior to scheduled time for opening, under following terms:
  - 1. CMAR may, without prejudice, withdraw Proposal after it has been deposited, provided request for such withdrawal is received in writing before the date and time set for opening.
  - 2. After opening, no Proposal may be withdrawn.
  - 3. Any interlineations, alteration, or erasure made before receiving time must be initialed and dated by the signer of the proposal, guaranteeing authenticity.

## 1.6 NON-RESPONSIVE PROPOSAL

- A. Proposal(s) may be considered NON-RESPONSIVE and, by way of example but not limitation, may be rejected for any of the following reasons (unless otherwise provided by law):
  - 1. If there are unauthorized additions, conditional proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous.
  - 2. If CMAR adds any provisions reserving right to accept or reject any award, or to enter into Contract pursuant to an award.
- B. Owner reserves right to reject any or all proposals and to waive irregularities or informalities as may be deemed in Owner's interest and/or re-issue an RFP for these Projects, or any one of them, as it may determine in its sole discretion.
- C. A proposal that is rejected will not be evaluated and will not be considered.

## 1.7 INTERPRETATIONS

- A. If CMAR is in doubt as to the true meaning or intent of this RFP 23001, CMAR must submit a written request for interpretation, through the District's online bid system, [www.publicpurchase.com](http://www.publicpurchase.com).
- B. CMAR submitting request is responsible for its prompt and actual delivery.
- C. Requests for interpretations of this RFP 23001 must be received on or before December 1<sup>st</sup>, 2022 at 8:00 PM.
- D. Owner is not responsible for any other explanation or interpretations, which anyone presumes to make.
- E. Any corrections, approvals, supplemental instructions or changes to the Proposal Documents will be made by written Addenda. Sole issuing authority of addenda shall be vested in the Owner.

- F. Addenda can be issued only by the Owner.
- G. Addenda will be posted online to [www.publicpurchase.com](http://www.publicpurchase.com) or may be mailed, hand delivered or emailed to all parties that have requested an RFP packet.
- H. CMARs shall acknowledge receipt of all Addenda.
- I. Failure to receive such Addendum does not relieve CMAR from any obligation under his proposal as submitted.
- J. All formal written Addenda become a part of RFP 23001.

1.8 INSURANCE REQUIREMENTS

The successful CMAR will be required to supply proof of insurance in accordance with the following schedule prior to the start of the Project. Owner requires that CMAR’s insurance be placed only with companies that have achieved at least an “A” rating with A.M. Best. The Owner reserves the right to require higher limits of coverage depending on the size, scope, and nature of the contract. Owner must be named as an additional insured and must be provided a waiver of subrogation on all policies.

| <u>TYPES OF INSURANCE COVERAGE</u> | <u>LIMITS OF LIABILITY</u>                                     |
|------------------------------------|--|
| 1. Workers Compensation            | Statutory  |
| 2. Employer’s Liability            | \$1,000,000 each accident<br>\$1,000,000 disease each employee |
| 3. Commercial General Liability    | \$1,000,000 per occurrence<br>\$2,000,000 general aggregate    |
| Products – completed operations    | \$2,000,000 aggregate  |
| Personal and advertising injury    | \$1,000,000 per occurrence                                     |
| Medical payments                   | \$5,000  |
| 4. Business Automobile Liability   | \$1,000,000 combined single limit                              |
| 5. Contractual Liability           | \$1,000,000 per occurrence<br>\$2,000,000 general aggregate    |
| 6. Umbrella/Excess Liability       | \$5,000,000 minimum amount                                     |
| 7. Builder’s Risk                  | Amount of Contract Sum   |

(Property damage deductible not to exceed \$10,000 per occurrence).

**\*NOTE\*** Any deviations from the types and amounts of coverage stated above should be specified in the proposal, and could be a basis for not selecting a proposal.

Workers Compensation: In Accordance with 28 Tex. Admin. Code § 110.110(c), which requires that the owner, in bid specifications, include certain language regarding workers’ compensation insurance, see Exhibit C.

1.9 METHOD OF AWARD-ONE STEP SELECTION PROCESS

The procurement method is CONSTRUCTION MANAGER-AT-RISK, ONE STEP PROCESS, as set out in Texas Government Code, Chapter 2269, Subchapter F.

A. Criteria and Weights: The Owner will use the following criteria and corresponding weights:

|  |            |
|--|------------|
| <b>FINANCIAL</b>   |            |
| Financial Strength – Ability to bond the project.  | 100 points |
| <b>EXPERIENCE OF COMPANY</b>   |            |
| What is the respondent's litigation record?  | 30 points  |
| Is the respondent experienced in the Panhandle of Texas construction market?   | 30 points  |
| Has the respondent constructed educational projects of similar size and complexity?  | 30 points  |
| Does the respondent have prior experience with Carthage ISD and if so was it positive?   | 30 points  |
| <b>EXPERIENCE AS CMAR</b>  |            |
| Does it appear the respondent will work effectively in a team environment with the Owner and Architect during the preconstruction, bidding and construction phases of the project? | 30 points  |
| What is the quality of the cost estimates provided by the respondent?  | 50 points  |
| What is the quality of the schedule and action plan to complete projects on schedule?  | 100 points |
| <b>PERSONNEL</b>   |            |
| Does the team of personnel proposed by the respondent appear to be qualified as necessary to meet the needs of this project?   | 150 points |
| <b>COST</b>  |            |
| Price  | 250 points |
| <b>INTERVIEWS</b>  |            |
| Interview (if applicable)  | 200 points |

Using these criteria and weights herein, the District’s Administration shall evaluate and make a recommendation to the Board. The Board shall, based on the District’s Administration recommendation, and the criteria and weights provided herein, rank proposals to determine the CMAR that presents the best value to the District.

- B. Per Section 44.043, of the Education Code, (b) notwithstanding any other provision of this chapter, a school district:
1. May not consider whether a vendor is a member of or has another relationship with any organizations; and
  2. Shall ensure that its bid specifications do not deny or diminish the right of a person to work because of the person’s membership or other relationship status with respect to any organization.

- C. Minimum Standards: CMARs are required to affirmatively demonstrate their responsibility by meeting the following minimum requirements:
1. have adequate financial resources;
  2. be able to comply with the required or proposed schedules;
  3. have a satisfactory record of performance;
  4. have a satisfactory record of integrity and ethics; and
  5. be otherwise qualified and eligible to receive an award.

The Owner may require other information sufficient to determine CMAR's ability to meet these minimum standards listed above.

- D. In addition to requirements of this RFP 23001, Owner may require additional information to establish responsibility of CMAR. Owner may further require identification of proposed subcontractors, suppliers and/or other persons and/or organizations proposed for portions of the Project and substantial data to determine their qualifications and experience. If requested, CMAR must submit all data to Owner. Owner may also consider and use as part of the evaluation, the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted per this RFP 23001 or prior to the award of Contract.
- E. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications and financial ability of CMAR, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the Project in accordance with this RFP 23001 to Owner's satisfaction within the prescribed time.
- F. If the Contract is to be awarded, it will be awarded to the best-qualified CMAR.
- G. Evaluation of Alternates - Any and/or all/none of the alternates may be considered in evaluation. Owner may award Contract on base proposal plus any and/or all/none of the alternates.
- H. Unbalanced Proposal - If the best CMAR's proposal is significantly unbalanced either in excess of or below reasonable cost analysis values normally associated with the work, the Proposal will be considered as non-responsive and will not be considered for award. The Owner reserves the right to evaluate and determine the next qualified Proposal for consideration of award.
- I. Proposals are due to be received not later than **10:00 am on December 8, 2022**.

#### 1.10 CONFIDENTIAL DATA

**Any data that is to be considered as confidential in nature must be clearly marked as such by CMAR and supported by written legal authority provided by CMARA, and will be treated as confidential by Owner to the extent allowable by the Texas Public Information Act, Texas Government Code §552.001, et seq.**

#### 1.11 ASSIGNMENT

The successful CMAR shall not sell, assign, transfer or convey a Contract, in whole or in part, without the prior written consent of Owner.

#### 1.12 VENUE

This RFP 23001 and any resulting agreement with the successful CMAR will be governed and construed according to the laws of the State of Texas, and venue for any proceeding arising out of or related to this RFP shall be in a state district court in the county where the District's administrative offices are located, i.e., Potter County, Texas.

#### 1.13 CONTRACT

This RFP 23001 is not a contract. The Owner will begin negotiations with the CMAR that is selected as the highest ranked CMAR to execute an amended AIA contract, as described below. If a contract cannot be executed between the Owner and the highest ranked CMAR, the Owner reserves the right to end negotiations and proceed to negotiate a contract with the next highest ranked CMAR, and so on until a contract for the Projects is obtained.

##### **AIA A133-2019**

Time is of the essence. The selected CMAR will be expected to execute an AIA A133 – 2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor, as amended by Owner. The Carthage ISD A133 Amendment is included with this RFP 23001 as Exhibit A.

##### **AIA A201-2017**

Time is of the essence. The selected CMAR will be expected to execute an AIA A201-2017 Standard Form of General Conditions of the Contract for Construction, as amended by Owner. The Carthage ISD A201 Amendment is included with this RFP 23001 as Exhibit B.

#### 1.14 CERTIFICATE OF INTERESTED PARTIES

Effective January 1, 2016, Texas governmental entities must comply with the "Disclosure of Interested Parties" mandated by Texas HB 1295, as implemented by the Texas Ethics Commission. Briefly stated, all contracts requiring an action or vote by the governing body of the entity or agency before the contract may be signed (regardless of the dollar amount) or that have a value of at least \$1 million will require the on-line completion of Form 1295 "Certificate of Interested Parties," per Texas Government Code § 2252.908. Form 1295 is also required for any and all contract amendments, extensions or renewals made after January 1, 2016. Therefore, contractor will be required to create, electronically file, and present such Form 1295 to the District using the Texas Ethics Commission's online filing application at final execution of any contract with the District.

#### 1.15 NO ISREAL BOYCOTT VERIFICATION

The 85th Texas Legislature enacted House Bill 89 (codified in chapter 2270 of the Texas Government Code). As of September 1, 2017, state law requires written verification by a for-profit company before it enters a contract with a local government (i.e., a school district) that verifies that the company does not boycott Israel and will not boycott Israel during the term of the contract. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

#### 1.17 COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR A FOREIGN TERRORIST ORGANIZATION

In accordance with Texas Government Code, Chapter 2252, Subchapter F, Owner is prohibited from entering into a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller or the State Pension Review Board under Texas Government Code Sections 806.051, 807.051, or 2252.153. By execution of this Contract, Contractor certifies to Owner that it is not a listed company under any of those Texas Government Code provisions. Contractor hereby voluntarily and knowingly acknowledges and agrees that this Contract shall be null and void should facts arise leading the Owner to believe that the Contractor was a listed company at the time of this procurement.

#### 1.18 AUDIT

The Owner will retain the right to audit the accounting records of the projects upon demand for up to 3 years after the final completion of the Project. The accounting method must clearly show the breakdown of the following as a minimum:

- Unit and materials costs
- Specific wage rates for all trades
- Premium time mark ups for all trades, if any
- Contractor's Fee
- Materials mark-up
- Subcontractors' mark-up
- Insurance and bond costs
- Equipment and tool rental costs

Audits may occur at any time. CMAR must be able to provide documentation required upon request within 24 hours during the duration of the Work. Audits will use the pricing information provided at bidding as the basis for verification of costs at each audit.

#### 1.19 BACKGROUND CHECK/FELONY CONVICTION NOTIFICATION

##### AGREEMENT/BID PACKAGE BETWEEN SCHOOL DISTRICT AND CMAR -

##### Criminal History Background Checks and Drug Testing

Construction Manager, all Subcontractors and all Sub-subcontractors shall ensure that any person assigned to perform work at any District location under the Contract meets the following criterion:

- No records in the Texas DPS Sex Offender Registration database.



- No felony convictions, open deferred adjudications or pending criminal trials in jurisdictions checked for crimes involving sex, violence or any other offense against or injury to a child.
- No felony convictions, open deferred adjudications or pending criminal trials in jurisdictions checked for the past seven (7) years, except for crimes involving sex, violence or any other offense against a child for which there is no time limit.
- No misdemeanor convictions, open deferred adjudications or pending criminal trials in jurisdictions checked for crimes involving sex or any other offense against a child.
- No misdemeanor convictions, open deferred adjudications or pending criminal trials in jurisdictions checked for the past seven (7) years for crimes involving violence.
- No positive drug test results.

**WORKER SAFETY IS A TOP PRIORITY AND WORK AT A CONSTRUCTION SITE IS INHERENTLY DANGEROUS.** CMAR shall perform and shall require, as a condition of contracting, all Subcontractors and Sub-subcontractors to perform criminal history background checks and drug testing on any person who is assigned to perform any work at any District location under the Contract and shall promptly produce to Owner the results of such background checks and drug testing upon request. Drug test shall consist of a five-panel screen for drugs of abuse. Substances and cut-off levels shall be consistent with Department of Transportation requirements. All positive results shall be laboratory confirmed and independently verified by a Medical Review Officer (MRO). Any person noticeably under the influence of drugs or alcohol will be relieved from work until it can be determined they are not under the influence.

A photo identification badge shall be issued to those persons meeting the screening criterion described above. Any person who is assigned to perform any work at any District location under the Contract shall be required to wear their identification badge while on-site. The Owner reserves the right to require workers to wear additional identification, such as, by way of example but not limitation, colored shirts or vests.

### III.

## SCOPE OF SERVICES AND CONTRACT

### Project Description

**RFP 23001– Construction and Renovations to Multiple campuses.** The District intends to award this Project to one Construction Manager.

**Project #1 Objective** – The project includes renovations to Baker Koonce Intermediate, New Construction to the Baseball and Softball Complex at Carthage High School, and Carthage Junior High School Roof replacement.

Scope of work includes interior refresh, HVAC upgrades, roofing replacements as well as construction of new concessions / restrooms, a new locker room facility, covered grandstand bleachers, and associated site work. The tentative bid date is the 1<sup>st</sup> week of April 2023 and completion date will be end of Sep 2024 -approximately 16 months construction duration.

**Estimated Construction Budget - \$ 28,500,000**

The Construction Budget encompasses all construction cost, including contingencies, construction manager fees, bonding and insurance and excludes the fee for architectural services.

**Architect** – Corgan – Dallas, Tx

**Estimated Project Substantial Completion Date - July 30, 2024.**

### **Contract Form and Scope of Services**

The Owner will contract directly with a CMAR for performing pre-construction services and general construction of the Projects. The CMAR will then conduct the subcontractor selection/bidding and contract with all subcontractors required for the Projects, pursuant to Texas Government Code §2269.255. The Owner reserves the right to contract separately with other suppliers, vendors, consultants and contractors as deemed in the best interest of the Owner's project. For construction work, this currently includes:

- Furniture Vendors.
- Independent testing and commissioning including materials testing and inspection, HVAC testing and balancing, etc. necessary for acceptance of the Project
- Data cabling materials and installation.

The CMAR will be reimbursed for the cost of the Work plus a Fee. For purposes of this RFP 3592, the terms of the contract will be the AIA A133-2019, as amended by the District (see Amendment attached as Exhibit A) and the AIA A201-2017, as amended by the District (See Amendment attached as Exhibit B).

The selected CMAR will provide a Guaranteed Maximum Price for the development of the Project.

The CMAR will participate in pre-construction services by providing input for scheduling, budgeting, development of documentation, inventory of existing materials, bidding of sub-contractors and construction of the Project and for "constructability" issues.

The CMAR shall publicly advertise and receive bids/proposals from all subcontractors for all portions of the Projects. Subcontractor bids or proposals shall be reviewed and approved as set out in Texas Government Code §2269.255.

The CMAR will be required to coordinate with any other contracts the Owner may issue directly, such as data communications cabling or others.

Payment and performance bonds will be required of the CMAR for 100% of each entire Project. The Owner will make all construction payments directly to the CMAR, for its distribution of payments to subcontractors and suppliers as appropriate.

**THE OWNER MAY ELECT TO PROCURE CERTAIN MATERIALS/EQUIPMENT DIRECTLY, WITH COORDINATION AND SCHEDULING SUPPORT FROM THE CMAR. THE EQUIPMENT WOULD THEN BE ASSIGNED TO THE CMAR WITH THE FULL ACCEPTANCE OF RESPONSIBILITIES FOR COORDINATION AND INSTALLATION.**

### **Bid Phase**

Proposals for subcontractors shall be solicited and received in accordance with the terms of the Construction Contract Documents, as amended, the Texas Government Code, and the Texas Education Code, as applicable.

**Pre-Construction Services Fees**, if any, are to be included, but separated, from the Construction Services Fee. Pre-Construction Services may include Scheduling, Budgeting and Cost Estimating as follows:

1. An estimate of probable construction cost based on completed construction documents, and conceptual site adaptation and development for this location. Provide an itemization of the estimate based upon the proposed bid packages to facilitate evaluation in reference to the GMP.
2. A project schedule identifying critical path and long lead items.
3. Continually monitor and maintain the construction portion of each Project budget. Provide substantially detailed estimates as an evaluative tool in the selection of design alternatives.
4. Provide cost saving analysis for systems and configurations. Evaluate quality, initial cost, maintenance and appropriateness.
5. Develop, monitor and maintain a Projects schedule for bidding and construction.
6. Assess the availability of all building components in regard to the each Project schedule.
7. Coordinate the bidding and issue of pre-purchase orders for long lead items, if required.
8. Make recommendations and provide references for manufacturers, suppliers and other subcontracts considered during design.
9. Review the Construction Contract Documents during development and report to the Architect on constructability and coordination of the information presented. The CMAR

is not responsible for the Architect's quality control but is to identify areas in the documents requiring additional information or clarification.

10. Attend design meetings with the Architect, Architect's consultants and Owner when requested.

### **Construction Phase**

The CMAR shall be responsible for all general construction services for the project. Basic Services shall include all permitting, estimating, scheduling, administration and on-site management required for the successful construction of the Project. Construction phase services are more specifically defined in the Contract Documents, which shall be made available as soon as possible upon request.

## IV. PROPOSAL RESPONSE GUIDELINES

Information included in your response to this RFP 23001 will be used to evaluate and rank CMAR firms. Clarity and completeness are encouraged. Repetition and duplication of information in multiple locations is discouraged. The information provided will be used to evaluate and score the responses in the categories and weights as published herein.

Under each category of response, as applicable, indicate why your firm is the most desirable to the Owner and why your proposal represents the best value for the Owner. Please note that how you respond to this issue can impact multiple categories in the evaluation criteria.

### **Bidders' response to this RFP 23001 shall include:**

1. **Fee Proposal Form for Work** as Prime CMAR, completed and executed on the attached Form. The Fee for Pre-Construction Services, if any, shall be presented as a lump sum amount (inclusive of overhead and profit). The Fee for Construction Period Services shall be based on a percentage amount times final construction cost, with a guaranteed maximum price to be determined.
2. **List of categories** that are included in the Fee for Construction Services. Describe how your fee is calculated; distinguish between what is included in your fee vs. the cost of the job.
3. **AIA Document A305, Contractor Qualification Statement or similar document.**
4. **Project Related Experience List** including relevant recent project work for educational facilities including dates, sizes of contracts, references for the same, and delivery method used.
5. **Experiences with Concepts for Work as a CMAR.** Describe your organization's concepts for working in a team relationship with the Owner and Architect during the design and construction of major projects. Describe your organization's methods for estimating costs, and for scheduling during the design/documents phases. Which (one or more) of those projects listed above best exemplify these concepts and experience?
6. **Resumes and References for Key Personnel** proposed for these Projects. Resumes of key personnel must show experience in projects of similar size, complexity and related challenges. Provide references that can substantiate their experience and background in similar types of facility construction. The CMAR's site staff during construction is anticipated to include a Project Manager, a full time Superintendent on-site, Project/Field Engineer and clerical support. CMAR shall not change the team staffing of this project without the consent of the Owner.
7. **Example of Proposed Accounting Method** for a CMAR contract on similar work.
8. **Describe your organization's concept for cost contingencies** both during design and during construction? What amount of the construction budget would you desire and recommend to be designated as "Owner's Contingency"? What is your organization's concept for the disposition of contingency funds after the completion of the project?

9. **Acknowledge that a Certificate of Insurance** will be provided with the coverages and amounts indicated in the Agreement and Conditions.

## V. EVALUATION AND INTERVIEWS

The evaluation team will consist of representatives from the Owner and the Architect.

Proposals will be taken and reviewed immediately upon opening at the date and time stated herein. A short list of CMARs may be interviewed, but the Owner reserves the right to make its selection strictly on the proposals submitted or to eliminate any Construction Manager(s) from the selection as late as the day prior to any potential interview if the Owner determines the proposal is insufficiently responsive or does not merit further consideration.

**Board interviews, if conducted, will be conducted with District Administration. It is anticipated any interview will be 45 minutes, with 30 minutes for the CMAR's presentation and remaining time for questions and discussion. As to the Project Team, the Project Manager, Superintendent and Lead Estimator should be in attendance as a minimum. The chemistry and comfort of the team is vital to the selection. The CMAR's focus on the interview should be specific to this Project and the Owners concerns, including:**

1. What has the CMAR done recently that is similar to this in schedule, complexity, scope, building type and construction?
2. What experience do the individuals proposed for these Projects have with similar and related work?
3. What are your thoughts on the schedule? Issues, most problematic portions? What strategies, tactics can be used to expedite, offsite work/preparation prior to onsite access, onsite tactics or strategies?
4. How will you estimate MEP and other major trades before they are brought onto the team? How do we get them onboard as early as we needed and still keep them competitive?
5. What is your experience in early procurement of equipment (switchgear, HVAC equipment, etc.)? How is it best done? Schedule lead times? Can you do it if the Subcontractor is not yet on the team?
6. What unique leverages/advantages do you offer these Projects? Knowledge, experience, subcontractor market issues, vendor/equipment supplier issues, city processes, etc.
7. Use of local sub-contractors, how do you generate interest from qualified firms?
8. What similar project have been completed in the last 5 years? Provide and present the below information from these projects.
  - a. Estimate at Design Development
  - b. Guaranteed Maximum Price
  - c. Final Construction Cost

**PROPOSAL FORM**  
**For**  
**CONSTRUCTION MANAGER AT RISK**  
**RFP 23001**  
**CARTHAGE INDEPENDENT SCHOOL DISTRICT**

Submitted by: \_\_\_\_\_

Date: \_\_\_\_\_ Phone No.: \_\_\_\_\_

To: Carthage Independent School District  
 Attn: Chief Financial Officer  
 #1 Bulldog Dr,  
 Carthage, Texas 75633

Having examined the RFP 23001 prepared by Carthage Independent School District, dated December 20, 2019, and having examined site conditions, the undersigned proposes to perform all work as CMAR for the above-named Projects. With an agreed upon GMP the undersigned proposes to furnish all labor, equipment and materials to complete the above-named Projects.

**PROPOSED FEES**

**Based on your company's plan to complete this Project, indicate your proposed fees and prices for the Scope of Work for this Project.** It is anticipated that the District will enter into a percent based contract with the construction manager during construction. Carthage Independent School District does not intend to share any construction cost savings with the CMAR; therefore, the cost savings methodology should not be submitted with the proposal. Base the computed fees below on the estimated construction budgets as stated in this proposal.

**Pre-Construction Services Fees:** \_\_\_\_\_ \$ \_\_\_\_\_

**Construction Services Fees:** \_\_\_\_\_ % \$ \_\_\_\_\_

**ATTACHMENTS**

Acknowledge by initialing in the blank that the following items are attached to this proposal:

- Proposal Bond \_\_\_\_\_
- Felony Conviction Notice \_\_\_\_\_
- Certification Sheet \_\_\_\_\_
- Certification regarding Lobbying \_\_\_\_\_
- Background History \_\_\_\_\_
- Acknowledgement Form \_\_\_\_\_
- Non-Collusion Affidavit \_\_\_\_\_
- Statement of Qualifications (AIA – A305) \_\_\_\_\_
- Verification of Compliance with federal and state laws \_\_\_\_\_
- Conflict of Interest Questionnaire \_\_\_\_\_
- Disclosure of Interested Parties (Form 1295) \_\_\_\_\_
- Workers Compensation language \_\_\_\_\_



**CARTHAGE INDEPENDENT SCHOOL DISTRICT**  
RFP 3592

ACKNOWLEDGEMENT OF PROPOSAL

**Company Name:** \_\_\_\_\_

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

**Contact Person:** \_\_\_\_\_

**Office Phone:** \_\_\_\_\_

**Mobile Phone:** \_\_\_\_\_

**e-mail:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

It is understood that the Owner reserves the right to reject any or all proposals or waive any informalities in the proposal process.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title (Seal, if a Corporation)

State whether Corporation,  
Partnership or Individual

\_\_\_\_\_  
Name of Contracting Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

THIS PROPOSAL FORM MUST BE SUBMITTED BY 10:00 AM, DECEMBER 8, 2022.

**CARTHAGE INDEPENDENT SCHOOL DISTRICT**

RFP 23001

**FELONY CONVICTION NOTICE REQUIREMENTS**

(Texas Education Code Sec. 22.08341 and District Policy CJA (LEGAL). Criminal History Record Information Review Of Certain Contract Employees)

CMAR: \_\_\_\_\_

Contract: \_\_\_\_\_ RFP 23001 \_\_\_\_\_

(Description of work to be performed for which this notice is requested)

Texas Education Code § 44.034, Notification of Criminal History, Subsection (a), states, “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.”

**Subsection (b) states “a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in this conviction. The district must compensate the person or business entity for services performed before the termination of the contract.”**

**THIS NOTICE IS NOT REQUIRED OF A PUBLICLY-HELD CORPORATION**

Carthage ISD Board Policy CH (LEGAL) also states the following with regard to criminal history information:

“The District may obtain criminal history record information that relates to an employee of, or applicant for employment by, a person that contracts with the District to provide services if:

- 1. The employee or applicant has or will have continuing duties related to the contracted services; and
- 2. The duties are or will be performed on school property or at another location where students are regularly present.”

*Texas Education Code 22.083(b)*

**CARTHAGE INDEPENDENT SCHOOL DISTRICT**

RFP 23001

***FELONY CONVICTION NOTIFICATION***

In accordance with the above-described statutory provisions, I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge:

VENDOR'S NAME: \_\_\_\_\_

AUTHORIZED COMPANY OFFICIAL: \_\_\_\_\_  
(Please print name of authorized official)

*Choose the following, as applicable:*

- A. My firm is a publicly-held corporation, therefore, this reporting requirement is not applicable.

Signature of Company Official: \_\_\_\_\_

- B. My firm is not owned nor operated by anyone who has been convicted of a felony:

Signature of Company Official: \_\_\_\_\_

- C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s):  
\_\_\_\_\_

Details of Conviction(s):  
\_\_\_\_\_

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

Signature of Company Official: \_\_\_\_\_

# CARTHAGE INDEPENDENT SCHOOL DISTRICT

RFP 23001

## CERTIFICATION SHEET

In order for a proposal to be considered, the following information must be provided.  
**FAILURE TO COMPLETE MAY RESULT IN DISQUALIFICATION**

Company Name \_\_\_\_\_

Mailing Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ Email address \_\_\_\_\_

In business under present name \_\_\_\_\_ years and \_\_\_\_\_ months

### COMPLETE THE APPROPRIATE SECTION BELOW:

#### RESIDENT BIDDER

**"Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.**

**I CERTIFY THAT MY COMPANY IS A "RESIDENT BIDDER":**

MR. MRS. MS. \_\_\_\_\_  
(Circle One) NAME (PLEASE PRINT)

POSITION \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

OR

#### NONRESIDENT BIDDER

"Nonresident bidder" refers to a person who is not a resident.

IF YOU QUALIFY AS A "nonresident bidder", you must furnish the following information:

What is your resident state? (The state your principal place of business is located.) \_\_\_\_\_

Does your "residence state" require bidders whose principal place of business is in Texas to underbid vendors whose residence state is the same as yours by a prescribed amount or percentage to receive a comparable contract? "Residence state" means the state in which the principal place of business is located.

YES \_\_\_\_\_ NO \_\_\_\_\_ If "YES", What is that amount or percentage? \_\_\_\_\_ %

**I CERTIFY THAT MY COMPANY IS A "NONRESIDENT BIDDER" AND THE ABOVE INFORMATION IS TRUE AND CORRECT:**

MR. MRS. MS. \_\_\_\_\_  
(Circle One) NAME (PLEASE PRINT)

POSITION \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**CERTIFICATION REGARDING LOBBYING**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,  
AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instruction.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
\_\_\_\_\_  
Company Authorized Representative (Print)

\_\_\_\_\_  
\_\_\_\_\_  
Signature

# CARTHAGE INDEPENDENT SCHOOL DISTRICT

RFP 23001

## Agreement with Carthage Independent School District Regarding Criminal History Background Searches with Vendors/Contractors

Carthage Independent School District has provided me with the information to be in compliance with the Senate Bill 9 mandate in regards to required background searches for all companies working with Carthage ISD as a vendor or contractor. My signature indicates that I will comply with Senate Bill 9 by conducting background searches and have employees fingerprinted with the DPS- Fingerprint-based Applicant Clearinghouse of Texas- FACT.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

**Attached: Copy of Information from Texas Education Agency and State Board of Education:**

### Instructions to School District Contractors Regarding Criminal History Background Searches Under Senate Bill 9

Senate Bill 9 directs school district contractors to obtain state and national criminal history background searches on their employees who will have direct contact with students, and to receive those results through the DPS criminal history clearinghouse (Fingerprint-based Applicant Clearinghouse of Texas – FACT). In order for contractors to receive the information through FACT, they must first establish an account with the DPS for FACT clearinghouse access. The Company owner must sign a user agreement with the DPS. To obtain the user agreement and more information, please contact:

Access and Dissemination Bureau  
Texas Department of Public Safety  
Crime Records Service  
PO Box 149322  
Austin, Texas 78714-9322  
Email: [FACT@txdps.state.tx.us](mailto:FACT@txdps.state.tx.us)  
Phone: (512) 424-2365

For fastest service, please email or call. State in the message that you are a school district contractor and need to have an account established for DPS FACT clearinghouse access. Please include:

Company Name  
Company Address  
Company Phone  
Name of Company point of contact  
Phone of Company point of contact  
Company email to be used for notification of FACT records and messages

The information in the DPS FACT Clearinghouse is confidential, and access must be restricted to the least number of persons needed to review the records. The account must include at least one designated supervisor to make necessary changes and to monitor the site's security and the access to the criminal history data retrieved. Additional users must be limited to those who need to request, retrieve, or evaluate data regarding the individual applicants.

**PLEASE NOTE:** After you sign the DPS User Agreement for FACT, DPS will provide you with a revised **FAST Fingerprint Pass** that you will have to provide to your employees and applicants. Your employees and applicants will use the **FAST Fingerprint Pass** when scheduling their FAST fingerprinting.

**CARTHAGE INDEPENDENT SCHOOL DISTRICT**

RFP 23001

**ACKNOWLEDGEMENT FORM**

Having carefully read the Standard Terms and Conditions and any Special Conditions listed in this document, the undersigned hereby agrees to furnish all goods and services specified on the Carthage ISD Proposal Form at the prices and transportation costs as proposed.

By submission of this proposal, the undersigned certifies that:

- a. This proposal has been independently arrived at without collusion with any other bidder or any other competitor;
- b. This proposal has not been knowingly disclosed and will not be knowingly disclosed, to any other bidder, competitor or potential competitor, prior to the opening of bids, or proposals for this project;
- c. No attempt has been or will be made to induce any other person, partnership or corporation to submit or not submit a proposal;
- d. The undersigned certifies that he is fully informed regarding the accuracy of the statements contained in this certification, and the penalties herein are applicable to the bidder as well as to any person signing in his/her behalf;
- e. Vendor warrants it has no interest, and shall acquire no interest that would directly or indirectly conflict in any manner or degree with the performance of this proposal. For violation or breach of this warranty, Carthage ISD shall have the right to annul this contract without liability;
- f. As required by Local Government Code 176.006, the undersigned acknowledges the requirement of filing a Conflict of Interest Questionnaire if there are any facts that would require such to be filed, and acknowledges the fact that the CIQ form can be obtained directly from the Carthage ISD Purchasing Office, 3301 N 23<sup>rd</sup> Street, Carthage, Texas 79015.
- g. The undersigned certifies that to his/her knowledge no Carthage ISD employee has any personal or beneficial interest whatsoever in this service or property described herein.

Respondent acknowledges receipt of Addenda number \_\_\_ through \_\_\_ and has incorporated the provisions therefore into this proposal.

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE



**CARTHAGE INDEPENDENT SCHOOL DISTRICT**  
**PURCHASING OFFICE**  
RFP 23001

**NON-COLLUSIVE BIDDING CERTIFICATION**

The undersigned affirms that they are duly authorized to execute a contract, that this company, corporation, firm, partnership or individual has not prepared this bid/proposal in collusion with any other bidder, and that the contents as to prices, terms and conditions have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid/proposal.

Vendor: \_\_\_\_\_

Street Address: \_\_\_\_\_ City, State, Zip \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Bidder Signature: \_\_\_\_\_

Bidder (Print Name): \_\_\_\_\_

Position with Company: \_\_\_\_\_

Signature of Company Officer: \_\_\_\_\_

Company Officer Printed Name: \_\_\_\_\_

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

**CARTHAGE INDEPENDENT SCHOOL DISTRICT**

RFP 23001

VERIFICATION OF  
COMPLIANCE WITH STATE AND FEDERAL LAWS

**Certification of Eligibility**

By submitting a bid in response to the solicitation, Contractor certifies that at the time of submission, they are not on the Federal Government’s list of suspended, ineligible, or debarred entities. In the event of placement on the list between the time of bid submission and time of award, the Contractor will notify the District. Failure to do so may result in terminating the contract for default.

**Relating to State Contracts with and Investments in Companies that Boycott Israel**

Effective September 1, 2017, Contractor verifies that it/he/she does not boycott Israel and will not boycott Israel during the term of this contract. The term “boycott Israel” is defined by Texas Government Code Section 808.001, effective September 1, 2017<sup>1</sup>.

**Relating to State Contracts with and Investment in Companies that do Business with Iran, Sudan, or any known foreign terrorist organizations**

Effective September 1, 2017, Contractor verifies that it/he/she does not do business with Iran, Sudan, or any known foreign terrorist organizations and will not do business with Iran, Sudan, or any known foreign terrorist organizations during the term of this contract. The term “foreign terrorist organization” is defined by Texas Government Code Section 806.001, effective September 1, 2017.

---

**Company Name:**

---

**Signature of Company’s Authorized Official:**

---

**Print Name:** \_\_\_\_\_

**Title** \_\_\_\_\_ **Date:** \_\_\_\_\_

---

<sup>1</sup> *Definition:* “boycott” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

**FORM CIQ**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1** Name of vendor who has a business relationship with local governmental entity.

**2**  Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3** Name of local government officer about whom the information is being disclosed.

\_\_\_\_\_  
 Name of Officer

**4** Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes       No

**5** Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
 Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
 Date

EXHIBITS A, B, & C

SEE ATTACHED  
CARTHAGE ISD AMENDMENTS TO  
AIA A133-2019 AND AIA A201-2017 CONTRACTS &  
WORKERS' COMPENSATION ATTACHMENT

 **AIA<sup>®</sup> Document A133™ – 2019****Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

Carthage Independent School District  
#1 Bulldog Drive  
Carthage, Texas 75633

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

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

**NOT FOR EXECUTION – FOR PROCUREMENT PURPOSES ONLY**

The Architect:  
*(Name, legal status, address, and other information)*

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT (if executed)

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

*(Provide total and, if known, a line item breakdown.)*

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:
- .2 Construction commencement date:
- .3 Substantial Completion date or dates:
- .4 Other milestone dates:

| (Paragraphs deleted)

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other contact information.)

| Owner's Superintendent or designee(s).

| (Paragraphs deleted)

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

| (Paragraphs deleted)

Init.

§ 1.1.15 Other Initial Information on which this Agreement is based:

*(Paragraph deleted)*

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, the A201 General Conditions specifically referenced herein, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

The Construction Manager accepts and owes to Owner a fiduciary duty, and further covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. Owner shall be entitled to rely on the information provided by Construction Manager in connection with the Construction Manager's construction administration and management services. Under no circumstances will the Construction Manager services include the performance of duties involving the practice of architecture or engineering. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Construction Manager agrees that 1) because it owes the Owner a duty of trust and confidence and 2) because of the covenants it has made to the Owner in this Agreement, Construction Manager would be violating its duty of trust and confidence to the Owner to agree to pursue claims or causes of action against the Owner on behalf of any other party, including but not limited to, any contractor, subcontractor, trade contractor or any other person or entity whatsoever. Construction Manager shall not make any agreement, written or otherwise, with any contractor, subcontractor, trade contractor or any other person or entity whatsoever to assert claims or causes of action in any event against the Owner. Should the Construction Manager make any agreement to assert any claims or causes of action on behalf of any other person or entity against the Owner, Construction Manager has breached its duty of trust and confidence, including its duty of utmost good faith, duty to be fair and equitable to Owner, duty to make reasonable use of the confidence Owner placed in it, duty to place Owner's interests before its own and not self-deal, and its duty to fully and fairly disclose all important information concerning the above-referenced Project.

### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 as amended shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017 as amended, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 as amended shall mean the Construction Manager.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase

Init.

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responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall provide complete and accurate schedules and estimates. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. Except as required by the Construction Manager's duty to exercise reasonable care or by any part of the Contract Documents, the Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Construction Manager and also as a request for information in such form as the Architect may require.

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

#### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase. The Construction Manager shall also review and ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, as negotiated with terms acceptable to Owner and executed by the Parties, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations in writing to the Owner and Architect.

#### **§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, availability of labor and materials, time of performance,

provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price.

### **§ 3.1.6 Cost Estimates**

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

**§ 3.1.6.2** Prior to the commencement of the Schematic Design, Design Development and Construction Documents phases, the Construction Manager shall prepare and submit for the Architect's review and Owner's written approval a written project schedule and written estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The Construction Manager shall inform the Owner and Architect in writing in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, describe the reasons therefor, and make written recommendations for corrective action.

**§ 3.1.6.3** If the Architect is providing cost estimating services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

**§ 3.1.7** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make written recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

**§ 3.1.8** The Construction Manager shall provide written recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

**§ 3.1.9** The Construction Manager shall provide a written staffing plan for Preconstruction Phase services for the Owner's review and approval.

**§ 3.1.10** If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, as negotiated with terms acceptable to the Owner and attached to this Agreement.

### **§ 3.1.11 Subcontractors and Suppliers**

**§ 3.1.11.1** The Construction Manager shall provide a written subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

**§ 3.1.11.2** The Construction Manager shall develop bidders' interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

**§ 3.1.11.3** The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

### **§ 3.1.12 Procurement**

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, then, upon the establishment of the Guaranteed

Maximum Price, the Owner may elect to assign all contracts for these items to the Construction Manager and the Construction Manager shall accept responsibility for them.

### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes (including, but not limited to, building and fire codes), rules and regulations, Owner's policies, and all applicable law and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

## § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and prior to advertising or solicitation of sub-contract proposals, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2; the clarifications and assumptions shall not delete or mitigate in any way any of the Construction Manager's duties or the Owner's rights under this Agreement and the applicable A201 General Conditions and shall not be treated as an amendment of this Agreement or the applicable A201 General Conditions; additionally, the Construction Manager shall notify the Owner and Architect in writing of any inconsistencies between the proposed assumptions and clarifications contained in the Guaranteed Maximum Price Proposal and the Contract Documents;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee; and
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based.

§ 3.2.3.5 If the Construction Manager includes in its Guaranteed Maximum Price proposal any terms, whether in the Assumptions and Clarifications or in any attachment or requirement of the Guaranteed Maximum Price proposal, which purport to modify the duties, rights, or privileges of either Party under this Agreement or the A201 General Conditions as amended, or otherwise require such a modification, the Construction Manager must: (1) list with each proposed term the section or sections of this Agreement or the A201 General Conditions that would be modified by the proposed term, and (2) provide notice to the Owner in a separate written letter that (a) the Construction Manager proposes to modify the terms of this Agreement and/or the A201 General Conditions through the Guaranteed Maximum Price proposal, and (b) the Owner should have its legal counsel review the proposed changes prior to the Owner's acceptance of the Guaranteed Maximum Price proposal.

If the Construction Manager does not comply with the requirements of this Section 3.2.3.5, the Owner shall be entitled to accept the pricing provided by the Construction Manager in its Guaranteed Maximum Price proposal without modification to this Agreement or the A201 General Conditions. Failure to notify the Owner under this section shall be considered a breach of the Construction Manager's fiduciary duty to the Owner.

Furthermore, the Owner's acceptance of a Guaranteed Maximum Price proposal does not obligate the Owner to make any modifications to this Agreement or A201 General Conditions nor entitle the Construction Manager to rely on the proposed modifications unless they have been incorporated into the Guaranteed Maximum Price Amendment executed by the Parties with specific reference to this Section 3.2.3.5 and the section or sections affected by the modification.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a separately-identified the "Construction Contingency," for use in accordance with this section. Any use of the Construction Contingency is subject to the Owner's right to approve or disapprove of any particular use. The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use (subject to Owner approval), as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price, but only to the extent such costs are within the Cost of the Work. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which were not reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects relating to design, delays in receipt of materials. The Construction Manager, with the Architect's and Owner's written approval, may utilize the Construction Contingency solely for any of the above items that are within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings within the Construction Contingency will accrue and be available for use, only as detailed above. All supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. Construction Manager shall notify the Owner and Architect, and request their approval, of every expenditure from the Construction Contingency no later than 15 days from the date it recognizes the need for the expenditure. Failure to comply with this timeline constitutes a waiver by Construction Manager of reimbursement for an expenditure. Notwithstanding anything in this section, Owner may withhold approval of use of the Construction Manager's Contingency if (1) the proposed expenditure arises from the negligence or other fault of the Construction Manager, a subcontractor, or anyone else for whom the Construction Manager is responsible; (2) the proposed expenditure is not reimbursable as a Cost of the Work or is otherwise disallowed under the Contract Documents; or (3) other good cause as determined by the Architect.

**§ 3.2.4.1** The Guaranteed Maximum Price proposal may also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the sole discretion of Owner. Any unused Owner's Contingency shall accrue to the Owner. Construction Manager has no contractual right to require that Owner make any expenditure from the Owner's Contingency.

**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. However, such review by Owner and Architect is not a guarantee or warranty of the accuracy of the Guaranteed Maximum Price.

**§ 3.2.6** The Owner's Board of Trustees shall be allowed not less than 30 days to consider the Guaranteed Maximum Price Proposal. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price, the Specifications, Drawings, and other Contract Documents, and the required date for Substantial Completion. Owner retains the absolute right not to accept any Guaranteed Maximum Price proposal and otherwise to elect not to proceed to the construction phase under this Agreement.



§ 3.2.7 The Construction Manager shall not enter into a subcontract or incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Construction Manager shall notify the Owner and Architect in writing of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the Contract Documents.

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any taxes for which the Owner is exempt under Texas law.

### § 3.3 Construction Phase

#### § 3.3.1 General

§ 3.3.1.1 The date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.1.3 Construction Manager shall not perform any portions of the Work unless (1) such services are for supervisory or administrative personnel described in Section 7.2, (2) such services are described in Sections 7.5, 7.6, or 7.7, or (3) it has been awarded such portion in accordance with the same procedures imposed upon all other trade contractors, and then, only if the Owner has determined that the Construction Manager's bid or proposal provides the best value for the Owner.

§ 3.3.1.3.1 All subcontracts for the Project shall be awarded in accordance with the Texas Government Code, Chapter 2269, Subchapter F and the requirements of this Agreement. In addition to other reasonable procedures and methods, the Construction Manager shall also do the following for procuring subcontracts:

- .1 The Construction Manager shall publicly advertise for bids or proposals by publishing in a newspaper published in the county in which the Owner's central administrative office is located a notice soliciting bids or proposals. Such notice must be published once a week for at least two weeks before the deadline to submit. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the Owner's central administrative office is located.
- .2 The Construction Manager shall require and ensure that bidders or proposers submit a complete copy of their bids or proposals directly to the Owner at the same time that the bids or proposals are submitted to the Construction Manager.

#### § 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct weekly or otherwise regularly scheduled meetings with the Owner, Architect, and appropriate subcontractors to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Promptly upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect an updated construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017 (as amended), including Owner's occupancy requirements.

#### § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

#### § 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect throughout the course of the Work, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

#### § 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances in writing to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

§ 3.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.
- .2 The special shoring requirements, if any, of the Owner.
- .3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 3.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

### ARTICLE 4 OWNER'S RESPONSIBILITIES

#### § 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner, upon written request of the Construction Manager, shall provide to the Construction Manager or shall ask the Architect or other appropriate consultant to provide to the Construction Manager, as soon as practically possible, such information in its possession or in the possession of the Architect or other consultant regarding the requirements of the Project, the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements, when such information is required in order for the Construction Manager to fulfill its responsibilities under this Agreement.

*(Paragraph deleted)*

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such test, surveys, and reports are provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager's use of the information at its own risk and Construction Manager shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall exercise reasonable care so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

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

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

§ 4.1.4.3 The Owner, when such services are requested in writing by the Construction Manager and such services are reasonably required to complete the Project in a manner consistent with good workmanship, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness upon written request by the Construction Manager. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, as negotiated with terms acceptable to the Owner, attached to this Agreement.

#### § 4.2 Owner's Designated Representative

The Owner may identify a representative authorized to act on behalf of the Owner with respect to the Project to the extent permitted by law and Owner's board policy and to the extent authorized by formal action by the Board of Trustees. The Owner's representative, if one is formally designated, shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, as amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative, if any. The Owner's Board of Trustees retains final approval authority over all Change Orders.

*(Paragraphs deleted)*

### ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

#### § 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

#### § 5.2 Payments

§ 5.2.1 Payments shall be made following the Construction Manager's presentation of an Application for Payment and approval and certification by the Architect of such application (or of a portion of such Application), subject to Owner's right to request a rescission or amendment of the Architect's certification, and further subject to any right Owner may have under the Contract Documents to withhold or otherwise reduce payment. Construction Manager's Applications for Payment must be proportional to services actually performed.

§ 5.2.2 Payments are due and payable as provided by law.

§ 5.2.3 The obligations of the Construction Manager under Article 10 shall apply to the Preconstruction Phase services. Each monthly invoice shall be supported by appropriate documentation, and the Construction manager shall supply such evidence as Owner or Architect may reasonably require to substantiate the compensation claimed.

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

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

None.

§ 6.1.4 Limitations, if any, on a subcontractor's overhead and profit for increases in the cost of its portion of the Work that are included in a Change Order or Construction Change Directive:

Overhead and profit shall not exceed 10% of the cost increase reflected in the Change Order or Construction Change Directive.

§ 6.1.5 The Construction Manager, along with the Guaranteed Maximum Price Proposal, shall submit its rental rates for Construction Manager-owned equipment. Compensation for these items shall not exceed the lower of (1) the standard rate paid at the place of the Project, or (2) the rates provided in the Guaranteed Maximum Price Proposal.

§ 6.1.6 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

Owner and Construction Manager recognize that time is of the essence in the Agreement and that the Owner will suffer financial loss if the Work is not completed within the time specified in the Guaranteed Maximum Price Amendment. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed within such time.

Accordingly, in the event the Construction Manager fails to achieve Substantial Completion of the Work by the agreed date, the Owner shall be entitled to liquidated damages in the amount of \$1,500 per day until the Work is substantially completed. In the event the Construction Manager fails to achieve Final Completion of the Work by the agreed date, the Owner shall be entitled to liquidated damages in the amount of \$500 per day until the Work is finally completed. In the event that the parties establish multiple required dates of Substantial Completion, these liquidated damages provisions apply independently to each required date of Substantial Completion and Final Completion. Unless the Guaranteed Maximum Price Amendment explicitly states otherwise, the Construction Manager shall achieve final completion of the Project no later than thirty (30) days from the date Substantial Completion.

It is expressly understood that these amounts are agreed upon as a fair estimate of the pecuniary damages that the Owner will incur if the Work is not completed within the agreed time. These amounts shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty.

The parties agree that the damages that the Owner would suffer due to the Construction Manager's failure to meet the necessary timelines are difficult to estimate. Each party represents that, as of the date of this Agreement, it believes the liquidated damages identified in this section to be a reasonable estimate of the damages that the Owner would suffer due to the Construction Manager's failure to meet the necessary timelines, and the Construction Manager acknowledges that such representation on its part is a substantial inducement to Owner's agreement with the terms of this Agreement.



The parties agree that the Owner may withhold any accrued liquidated damages at any time and from any payment that otherwise may be due to the Construction Manager. The parties further agree that the sum of all liquidated damages under this section shall also be deemed a credit against amounts owed by Owner to Construction Manager.

**§ 6.1.7 Other:**

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

If the Construction Manager completes the performance of the Work for less than the Guaranteed Maximum Price, the difference between (i) the total aggregate sum of the actual Cost of the Work plus the Construction Manager's fee and (ii) the Guaranteed Maximum Price shall inure in its entirety to the Owner's benefit.

**§ 6.2 Guaranteed Maximum Price**

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

**§ 6.3 Changes in the Work**

**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction, as amended.

**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction, as amended.

**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as amended, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 as amended shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

**§ 6.3.5** In the case of changes in the Work, the Construction Manager's Fee will be adjusted as provided for in Section 6.1.3, if the Construction Manager, Owner, and Architect agree that the scope of services has changed significantly. If, however, these parties cannot agree that the scope of services has changed significantly, the Construction Manager's Fee shall not be adjusted.

**ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

**§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. If Construction Manager fails to do so, it waives any right to reimbursement of such costs.

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

**§ 7.1.4** The Cost of Work shall not include costs incurred because of the negligence, breach of contract, or other misconduct of the Construction Manager or of any subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of the Work shall be included in the Guaranteed Maximum Price.

## § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops.

§ 7.2.1.1 To the extent allowed by law, the Construction Manager may seek to perform portions of the Work itself by submitting a bid or proposal for those portions of the Work in the same manner as all other trade contractors or subcontractors (such work is referred to in this section as "Self-Performed Work"), subject to the following provisions:

1. Self-Performed Work is payable on a "cost"-plus-"fee" basis subject to an agreed-upon guaranteed maximum price, as follows:
  - (i) The "cost" is defined as costs for the following items, but only to the extent they are properly reimbursable as Cost of the Work under this Agreement: labor performed with Construction Manager's own forces, labor burden, materials, and equipment.
  - (ii) The "fee" is defined as an amount no more than 7.5% of the "cost." The "fee" defined in this Section 7.2.1.1(ii) solely applies to the "cost" under Section 7.2.1.1(i), and in no circumstances can it be applied as the fee for Work properly categorized as "Subcontract Costs" under Section 7.3.
2. The Construction Manager's bid or proposal shall reflect the requirements of this section and shall specify a guaranteed maximum amount for the Self-Performed Work. The Owner's obligation to reimburse for Self-Performed Work shall not exceed the specified and agreed-upon guaranteed maximum price for such Self-Performed Work.
3. All savings arising from Self-Performed Work shall be applied to reduce the Guaranteed Maximum Price of this Agreement.
4. For purposes of defining Self-Performed Work, any division of Construction Manager, or any separate contractor or subcontractor that is partially owned or wholly owned by the Construction Manager, or any of Construction Manager's parent companies, employees, or employee's relatives will be considered a related party entity and any work performed by such entity will be considered Self-Performed Work by the Construction Manager.
5. No Self-Performed Work will be allowed to be performed on a lump-sum basis.
6. If the Construction Manager does not self-perform the majority of the scope of Self-Performed Work and as a result subcontracts a significant portion of the scope of work to another trade contractor, then no self-performed work fees will apply to the cost of any such work.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior written approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

None.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for payroll taxes, but not any taxes for which the Owner is exempt by virtue of its status as a governmental entity, insurance as required by the Contract Documents, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall not increase throughout the duration of this Agreement, unless the parties execute a Modification.

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### **§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to subcontractors in accordance with the requirements of the subcontracts and this Agreement. To the extent that the Construction Manager is allowed by law and by the Contract Documents to perform work with its own forces, the parties agree that those costs will not be considered Subcontract Costs under this Section 7.3, but, rather, are subject to reimbursement to the extent provided elsewhere in this Article 7.

### **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

**§ 7.5.4** Costs of the Construction Manager's site office, including general office equipment and supplies necessary for the performance of the Work.

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

### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

*(Paragraphs deleted)*

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

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

*(Paragraphs deleted)*

**§ 7.6.7** Reasonable costs of document reproductions and delivery charges.

**§ 7.6.8** Deposits lost for causes directly resulting from the Owner's actions.

*(Paragraphs deleted)*

## **§ 7.7 Other Costs and Emergencies**

*(Paragraph deleted)*

**§ 7.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017 as amended.

*(Paragraphs deleted)*

## **§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

## **§ 7.9 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any subcontractor or vendor;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Costs incurred because of the negligence, breach of contract, or other misconduct of the Construction Manager or any subcontractor;
- .11 Delay damages or claims, including but not limited to acceleration costs; and
- .12 Storage costs, unless with prior written approval of the Owner.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

**§ 8.1** Cash discounts, trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 8.2** Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** Those portions of the Work that the Construction Manager does not perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids.

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The Construction Manager shall furnish to Owner and Architect for the Owner's approval prior to any public advertisement or solicitation for the portion of the Work, the evaluation criteria that the Construction Manager proposes to use in recommending qualified trade contractors or subcontractors for each portion of the Work that will provide the best value for the Owner. After acceptance of the GMP proposal, the Construction Manager shall obtain bids from subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. All subcontracts for the Project shall be awarded in accordance with the Texas Government Code, Chapter 2267, Subchapter F.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, and (4) offers the best value to the Owner, then the Construction Manager may request that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

§ 9.3 The Construction Manager shall include the following specific notices in the information to proposers, along with any other notices required by law:

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate; and
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

#### ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Project, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, subcontractor's proposals, subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of twelve (12) years after final payment, or for such longer period as may be required by law.

All records shall be maintained in accordance with generally accepted accounting principles and procedures, consistently applied. Subcontractors retained by the Construction Manager on a cost-plus basis shall have the same obligations to retain records and cooperate with audits as are required of the Construction Manager under this Article 10.



## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents, subject to Owner's right to request a rescission or amendment of the Architect's certification, and further subject to any right Owner may have under the Contract Documents to withhold or otherwise reduce payment. .

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

§ 11.1.3 The Architect will, within seven days after receipt of the Construction Manager's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Paragraph 9.5 of the AIA Document A201-2017, as amended by the parties. Owner shall make payment for amounts properly due pursuant to the requirements of the law. Notwithstanding such certification for payment by the Architect however, Owner shall be entitled to withhold payment to such extent as may be necessary in the Owner's opinion, reasonably supported, to protect the Owner from loss for which the Construction Manager is responsible, including loss of the reasons listed in 9.5.1 of the AIA Document A201-2017, as amended. Such withholding of such payment by owner shall not be deemed a breach of the Contract Documents nor a failure to make timely payment.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. Additionally, with each Application for Payment, the Construction Manager shall submit a "buyout report" that accurately reflects the status (including monetary amounts) of all contracts entered into by the Construction Manager for performance of the Work.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and Owner.

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

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§ 11.1.7 In accordance with AIA Document A201–2017 as amended and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect’s professional judgment, to be reasonably justified; and
- .4 The Construction Manager’s Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager’s Fee is stated as a fixed sum in that section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 as amended;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation;
- .6 Retainage withheld pursuant to Section 11.1.8; and
- .7 Liquidated damages as provided in this Agreement, except that Owner may elect to subtract such amounts from any subsequent pay application.

#### § 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

None.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

None.

*(Paragraphs deleted)*

§ 11.1.10 Except with the Owner’s prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In submitting the Construction Manager's Applications for Payment the Construction Manager shall be responsible for all errors and omissions.

§ 11.1.13 If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

## § 11.2 Final Payment

§ 11.2.1 Final payment shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, as amended, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other personnel; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2 and approved by the Owner.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit. It is the Construction Manager's responsibility to ensure that the final accounting it submits is full and complete. Owner may deduct from any payment otherwise owed to Construction Manager any amount that Owner or Owner's auditor determines is not supported by the Construction Manager's final accounting. Additionally, any amount paid by the Owner in excess of that required by this Agreement shall be, at Owner's election, either withheld from any payment otherwise due to Construction Manager, or returned by Construction Manager within seven days of the date Construction Manager becomes aware of such overpayment.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 30 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017 as amended. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017 as amended. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' or other agents or representatives of the Owner's report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017, as amended. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors or other agents or representatives of the Owner becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall, subject to all of the Owner's rights to withhold payment or otherwise deduct amounts, pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as otherwise allowed by law.

*(Paragraph deleted)*

## § 11.3 Interest



Payments due and unpaid under the Contract shall bear interest  
(Paragraphs deleted)  
as provided by law.

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017, as amended. The Claims process set forth in this Article 12 and in Article 15 of the applicable A201 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017  
(Paragraphs deleted)  
as amended.

### § 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017 as amended, the method of binding dispute resolution shall be as follows:  
(Check the appropriate box.)

N/A

Litigation in a court of competent jurisdiction, subject to any other requirements that may need to be satisfied prior to the commencement of litigation.

N/A

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

### § 12.3. Contractual Adjudication Procedure for all Claims and Disputes

.1 The requirements of this Section 12.3 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

.2 **Pre-Litigation Grievance and Mediation.** Any claim, dispute or other matter in question that Construction Manager has against Owner shall be subject to full exhaustion of the grievance procedure found in Owner's GF (LOCAL) policy and non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by Construction Manager. In the case of any such claim, dispute, or other matter, by the Construction Manager against the Owner, including, but not limited to, any claim that the Owner has breached a contract, the Construction Manager may not file a lawsuit or demand mediation until the complaint procedure found in Owner's GF (LOCAL) policy has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit A-1. The Construction Manager's failure to timely file a grievance under policy GF (LOCAL), meet any requirement of this Article 12, or otherwise fully exhaust policy GF (LOCAL) in accordance with the policy's requirements is a failure to adhere to contractual adjudication procedures, a failure to exhaust remedies, a failure to fulfill conditions precedent, constitutes waiver, and is a bar to suit against the Owner.

a. The timelines under Policy GF (LOCAL) are amended for purposes of this Agreement as follows: Construction Manager's complaint must be reduced to writing and filed within ninety (90) calendar days of the date the Construction Manager first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint. If the Construction Manager fails to meet this timeline, the Construction Manager will have failed to exhaust this remedy, will have failed to adhere to this contractual adjudication procedure, will have failed to fulfill conditions precedent to suit,

Init.

will have waived the complaint, and will be barred from suing the Owner.

- b. Construction Manager agrees that, in order to fully exhaust its remedies under policy GF (LOCAL) and otherwise comply with this Section 12.3, Construction Manager must identify and articulate in writing the specific factual and legal basis for its claims. Any basis that is not identified and articulated by the Construction Manager as part of its complaint under GF (LOCAL) is waived by the Construction Manager and may not be asserted in any subsequent proceeding against the Owner.
- c. The following are each an independent condition precedent to the institution of civil proceedings by the Construction Manager against the Owner concerning the contested matter: 1) full exhaustion of claims through Owner's GF (LOCAL) policy as described herein, 2) full exhaustion of the Claims process referenced in this Agreement and the applicable A201, 3) a written demand by the Construction Manager for mediation, and 4) good faith and full participation in the mediation process.
- d. Following the full exhaustion of claims through Owner's GF (LOCAL) procedure, and upon receipt by Owner of Construction Manager's written demand for mediation, Owner may, at its option, either proceed with non-binding mediation of the dispute, or provide written notice to Construction Manager of Owner's decision to waive its right to compel such mediation. Owner's voluntary participation in any mediation or any other settlement discussions shall not be construed as a waiver of any failure by Construction Manager to exhaust remedies, follow contractual adjudication procedures, or otherwise comply with the Contract Documents. If the parties participate in mediation, the parties shall share the mediator's fee and any filing fees equally.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, for the Owner's convenience and without cause

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, solely as provided in Article 5, and shall have no other recovery. In no event shall the Construction Manager's compensation under this section exceed the compensation set forth in Section 5.1

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be compensated for Preconstruction Phase services. In no event shall the Construction Manager's compensation under this section exceed the compensation set forth in Section 5.1.

**§ 13.1.5** If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase pursuant to a written agreed-upon Work Authorization Amendment, but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work performed by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services; and

- .4 Credit Owner for claims, credits, offsets, and deductions to which the Owner is entitled under the Contract Documents.

§ 13.1.6 The Owner shall also pay the Construction Manager, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

## § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017, as amended.

### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager’ Fee is stated as a fixed sum in that section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017; and
- .5 Credit Owner for claims, credits, offsets, and deductions to which the Owner is entitled under the Contract Documents.

§ 13.2.2.2 The Owner shall also pay the Construction Manager, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### § 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner’s convenience.)*

None.

### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017 as amended; in such case, the Guaranteed Maximum Price and Contract Time may be increased as provided in Article 14 of AIA Document A201–2017 as amended.

### § 13.4. Damages

In no event shall the Construction Manager be entitled to recover for overhead, lost profits, benefit of the bargain damages, consequential damages, lost opportunity costs, impact damages, damage to reputation, financing costs, loss of productivity, stand-by time, demobilization costs, termination costs, loss of surety bonding capacity, or other damages by reason of any termination or suspension by Owner or the Construction Manager. Construction Manager expressly waives any such claims. This Section 13.4 shall not be interpreted to support any claim for damages by the Construction Manager.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017, as amended. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017 as amended, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

### § 14.3 Insurance and Bonds

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2017, as amended.

The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager’s usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

### § 14.5 Other provisions:

§ 14.5.1 The right to the recovery of attorney’s fees available under Texas Local Government Code Chapter 271, Subchapter I is hereby waived.

§14.5.2 Prior to releasing monthly payments to subcontractors, the Construction Manager shall call the suppliers of each subcontractor to determine if any of the subcontractors have an outstanding balance with a supplier. In the event that a subcontractor has an outstanding balance with a supplier, the Construction Manager shall joint check such outstanding balance and receive a release from the supplier.

§ 14.5.3 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or

agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

**§ 14.5.4** Construction Manager shall require all construction workers, whether Construction Manager's own forces, or the forces of Construction Manager's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

**§ 14.5.5** Construction Manager shall require all construction workers, whether Construction Manager's own forces or the forces of Construction Manager's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations may be towed at the vehicle owner's sole expense.

**§ 14.5.6** Construction Manager shall follow, and shall require all employees, agents or subcontractors to follow all applicable ordinances of the municipality or municipalities in which the Project is located, including the tree ordinance, if applicable. If not covered by the municipal tree ordinance, Construction Manager shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

**§ 14.5.7** By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

**§ 14.5.8** Construction Manager stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically required by law.

**§ 14.5.9** This Agreement is subject to all applicable federal and state laws, rules, and regulations.

**§ 14.5.10** This Section 14.5.10 only applies if Construction Manager has more than 10 full time employees and the Agreement is valued at \$100,000 or more. By executing this Agreement, Construction Manager verifies the following:

- .1 as required by Texas Government Code 2270.002: Construction Manager verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.
- .2 as required by Texas Government Code 2274.002, Construction Manager verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.
- .3 as required by Texas Government Code 2274.002, Construction Manager verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

**§ 14.5.11.** The Construction Manager agrees and stipulates that the unpaid portion of the Contract Sum (up to the Guaranteed Maximum Price established in the GMP Amendment and as subject to modification by means of a Modification as defined in the A201 General Conditions applicable to the Project), is the absolute maximum amount that could ever possibly be due and owing under this Agreement from Owner to Construction Manager. The Construction Manager hereby waives any claim against Owner for any amount in excess of the amount stipulated in this Section 14.5.11. The Construction Manager's agreement, stipulation, and waiver under this section are each a material inducement to Owner's agreement.

#### **§ 14.6 Contracting Information**

**§ 14.6.1** This Section 14.6 applies only if, per Texas Government Code §552.371(a), (1) the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body; or (2) the Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner.

**§ 14.6.2** Pursuant to Texas Government Code §552.372, the Construction Manager must:

- (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract;



- (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and
- (3) on completion of the contract, either:
  - (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or
  - (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

**§ 14.6.3** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor or vendor agrees that the contract can be terminated if the Contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

**§ 14.6.4** "Contracting information" is defined by Texas Government Code §552.003(7) and means the following information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor:

- (A) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body;
- (B) solicitation or bid documents relating to a contract with a governmental body;
- (C) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract;
- (D) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and
- (E) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

**§ 14.7** The Construction Manager shall not execute a contract with any subcontractor that contains an agreement or provision to arbitrate claims. In the event that a subcontractor seeks to arbitrate a claim arising out of or relating to the Contract Document or this Project, Construction Manager shall not seek to join in such or any other arbitration proceeding relating to this Project.

**§ 14.8** Construction Manager agrees to waive any claim it has or may have against the Owner, the Architect, and their respective employees and officers, arising out of or in connection with the administration, evaluation, or recommendation of any bid or proposal; waiver of any requirements under the procurement documents related to this Project; the Contract Documents; acceptance or rejection of any bids or proposals; and award of the Contract.

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

**§ 15.2** The following documents comprise the Agreement:

- .1 This modified AIA Document A133™-2019, 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
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed  
*(Paragraphs deleted)*
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended
- .7 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Exhibit A-1 – Owner’s GF (LOCAL) Board Policy  
Exhibit B – Prevailing Wage Rate Schedule (see Section 3.4.1.1 of the A201 General Conditions, as amended)

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

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DATE**



Init.

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# Additions and Deletions Report for AIA<sup>®</sup> Document A133™ – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:27:26 CT on 11/21/2022.

## PAGE 1

Carthage Independent School District  
#1 Bulldog Drive  
Carthage, Texas 75633

...

NOT FOR EXECUTION – FOR PROCUREMENT PURPOSES ONLY

## PAGE 2

**EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**

**~~EXHIBIT B – INSURANCE AND BONDS~~(if executed)**

## PAGE 3

**§ 1.1.5** ~~The Owner's requirements for accelerated or fast track scheduling, or phased construction, are set forth below:~~  
*(Identify any requirements for fast track scheduling or phased construction.)*

**§ 1.1.6** ~~The Owner's anticipated Sustainable Objective for the Project:~~  
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

**§ 1.1.6.1** ~~If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234 2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234 2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~

...

Owner's Superintendent or designee(s).

**§ 1.1.10** ~~The Owner shall retain the following consultants and contractors:~~  
*(List name, legal status, address, and other contact information.)*

.1 — Geotechnical Engineer:



~~2~~ Civil Engineer:

~~3~~ Other, if any:

*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*

...

~~§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner specific requirements for subcontractor procurement.)~~

#### PAGE 4

~~§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.~~

...

The Contract Documents consist of this Agreement, ~~Conditions of the Contract (General, Supplementary and other Conditions), the A201 General Conditions specifically referenced herein,~~ Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

...

The Construction Manager accepts ~~the relationship of trust and confidence established by this Agreement and~~ owes to Owner a fiduciary duty, and further covenants with the Owner to cooperate with the Architect and exercise the

Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. Owner shall be entitled to rely on the information provided by Construction Manager in connection with the Construction Manager's construction administration and management services. Under no circumstances will the Construction Manager services include the performance of duties involving the practice of architecture or engineering. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Construction Manager agrees that 1) because it owes the Owner a duty of trust and confidence and 2) because of the covenants it has made to the Owner in this Agreement, Construction Manager would be violating its duty of trust and confidence to the Owner to agree to pursue claims or causes of action against the Owner on behalf of any other party, including but not limited to, any contractor, subcontractor, trade contractor or any other person or entity whatsoever. Construction Manager shall not make any agreement, written or otherwise, with any contractor, subcontractor, trade contractor or any other person or entity whatsoever to assert claims or causes of action in any event against the Owner. Should the Construction Manager make any agreement to assert any claims or causes of action on behalf of any other person or entity against the Owner, Construction Manager has breached its duty of trust and confidence, including its duty of utmost good faith, duty to be fair and equitable to Owner, duty to make reasonable use of the confidence Owner placed in it, duty to place Owner's interests before its own and not self-deal, and its duty to fully and fairly disclose all important information concerning the above-referenced Project.

...

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 as amended shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, A201-2017 as amended, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 as amended shall mean the Construction Manager.

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The Construction Manager shall ~~exercise reasonable care in performing its Preconstruction Services, provide complete and accurate schedules and estimates.~~ The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The-Except as required by the Construction Manager's duty to exercise reasonable care or by any part of the Contract Documents, the Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Construction Manager and also as a request for information in such form as the Architect may require.

...

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase. The Construction Manager shall also review and ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, as negotiated with terms acceptable to Owner and executed by the Parties, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each ~~Subcontractor~~; subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations in writing to the Owner and Architect.

...

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, availability of labor and materials, time of performance, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price.

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

~~§ 3.1.6.2 As the Architect progresses with the preparation~~ Prior to the commencement of the Schematic Design, Design Development and Construction Documents, Documents phases, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an submit for the Architect's review and Owner's written approval a written project schedule and written estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in writing in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, describe the reasons therefor, and make written

§ 3.1.6.3 If the Architect is providing cost estimating ~~services as a Supplemental Service, services,~~ and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make written recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide written recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a written staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, as negotiated with terms acceptable to the Owner and attached to this Agreement.

...

~~§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a~~ The Construction Manager shall provide a written subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the ~~Project~~ Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

...

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, ~~the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the then, upon the~~ establishment of the Guaranteed Maximum Price, the Owner ~~shall~~ may elect to assign all contracts for these items to the Construction Manager and the Construction Manager shall ~~thereafter~~ accept responsibility for them.

#### PAGE 7

The Construction Manager shall comply with applicable laws, statutes, ordinances, ~~codes, rules and regulations, codes~~ (including, but not limited to, building and fire codes), rules and regulations, Owner's policies, and all applicable law and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction ~~Manager, Manager and prior to~~ advertising or solicitation of sub-contract proposals, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction ~~Manager's contingency~~ Contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. ~~Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

...

- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2; the clarifications and assumptions shall not delete or mitigate in any way any of the Construction



Manager's duties or the Owner's rights under this Agreement and the applicable A201 General Conditions and shall not be treated as an amendment of this Agreement or the applicable A201 General Conditions; additionally, the Construction Manager shall notify the Owner and Architect in writing of any inconsistencies between the proposed assumptions and clarifications contained in the Guaranteed Maximum Price Proposal and the Contract Documents;

- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee; and
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and based.

§ 3.2.3.5 If the Construction Manager includes in its Guaranteed Maximum Price proposal any terms, whether in the Assumptions and Clarifications or in any attachment or requirement of the Guaranteed Maximum Price proposal, which purport to modify the duties, rights, or privileges of either Party under this Agreement or the A201 General Conditions as amended, or otherwise require such a modification, the Construction Manager must: (1) list with each proposed term the section or sections of this Agreement or the A201 General Conditions that would be modified by the proposed term, and (2) provide notice to the Owner in a separate written letter that (a) the Construction Manager proposes to modify the terms of this Agreement and/or the A201 General Conditions through the Guaranteed Maximum Price proposal, and (b) the Owner should have its legal counsel review the proposed changes prior to the Owner's acceptance of the Guaranteed Maximum Price proposal.

.5 A date by which the Owner must accept the Guaranteed Maximum Price. If the Construction Manager does not comply with the requirements of this Section 3.2.3.5, the Owner shall be entitled to accept the pricing provided by the Construction Manager in its Guaranteed Maximum Price proposal without modification to this Agreement or the A201 General Conditions. Failure to notify the Owner under this section shall be considered a breach of the Construction Manager's fiduciary duty to the Owner.

Furthermore, the Owner's acceptance of a Guaranteed Maximum Price proposal does not obligate the Owner to make any modifications to this Agreement or A201 General Conditions nor entitle the Construction Manager to rely on the proposed modifications unless they have been incorporated into the Guaranteed Maximum Price Amendment executed by the Parties with specific reference to this Section 3.2.3.5 and the section or sections affected by the modification.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order separately-identified the "Construction Contingency," for use in accordance with this section. Any use of the Construction Contingency is subject to the Owner's right to approve or disapprove of any particular use. The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use (subject to Owner approval), as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price, but only to the extent such costs are within the Cost of the Work. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which were not reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects relating to design, delays in receipt of materials. The Construction Manager, with the Architect's and Owner's written approval, may utilize the Construction Contingency solely for any of the above items that are within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings within the Construction Contingency will accrue and be available for use, only as detailed above. All supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. Construction Manager shall notify the Owner and Architect, and request their approval, of every expenditure from the Construction Contingency no later than 15 days from the date it recognizes the need for the expenditure. Failure to comply with this timeline constitutes a waiver by Construction Manager of reimbursement for an expenditure. Notwithstanding anything in this section, Owner may withhold approval of use of the Construction Manager's Contingency if (1) the proposed expenditure arises from the negligence or other fault of the Construction Manager, a subcontractor, or anyone else for whom the Construction Manager is

responsible; (2) the proposed expenditure is not reimbursable as a Cost of the Work or is otherwise disallowed under the Contract Documents; or (3) other good cause as determined by the Architect.

§ 3.2.4.1 The Guaranteed Maximum Price proposal may also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the sole discretion of Owner. Any unused Owner's Contingency shall accrue to the Owner. Construction Manager has no contractual right to require that Owner make any expenditure from the Owner's Contingency.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price ~~proposal~~ proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. However, such review by Owner and Architect is not a guarantee or warranty of the accuracy of the Guaranteed Maximum Price.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. ~~The Owner's Board of Trustees shall be allowed not less than 30 days to consider the Guaranteed Maximum Price Proposal.~~ Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Price, the Specifications, Drawings, and other Contract Documents, and the required date for Substantial Completion. Owner retains the absolute right not to accept any Guaranteed Maximum Price proposal and otherwise to elect not to proceed to the construction phase under this Agreement.

§ 3.2.7 The Construction Manager shall not enter into a subcontract or incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect in writing of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. any taxes for which the Owner is exempt under Texas law.

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§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2017, the The date of commencement of the Work shall mean the date of commencement of the Construction Phase.

...

§ 3.3.1.3 Construction Manager shall not perform any portions of the Work unless (1) such services are for supervisory or administrative personnel described in Section 7.2, (2) such services are described in Sections 7.5, 7.6, or 7.7, or (3) it has been awarded such portion in accordance with the same procedures imposed upon all other trade contractors, and then, only if the Owner has determined that the Construction Manager's bid or proposal provides the best value for the Owner.

§ 3.3.1.3.1 All subcontracts for the Project shall be awarded in accordance with the Texas Government Code, Chapter 2269, Subchapter F and the requirements of this Agreement. In addition to other reasonable procedures and methods, the Construction Manager shall also do the following for procuring subcontracts:

- .1 The Construction Manager shall publicly advertise for bids or proposals by publishing in a newspaper published in the county in which the Owner's central administrative office is located a notice soliciting bids or proposals. Such notice must be published once a week for at least two weeks before the deadline to submit. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the Owner's central administrative office is located.
- .2 The Construction Manager shall require and ensure that bidders or proposers submit a complete copy of their bids or proposals directly to the Owner at the same time that the bids or proposals are submitted to the Construction Manager.

§ 3.3.2.1 The Construction Manager shall schedule and conduct weekly or otherwise regularly scheduled meetings with the Owner, Architect, and appropriate subcontractors to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 ~~Upon~~ Promptly upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a-an updated construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017, A201-2017 (as amended), including Owner's occupancy requirements.

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The Construction Manager shall keep, and make available to the Owner and ~~Architect~~, Architect throughout the course of the Work, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the ~~work~~, Work, accidents, injuries, and other information required by the Owner.

...

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances in writing to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

§ 3.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.
- .2 The special shoring requirements, if any, of the Owner.
- .3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 3.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

...

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth Owner, upon written request of the Construction Manager, shall provide to the Construction Manager or shall ask the Architect or other appropriate consultant to

provide to the Construction Manager, as soon as practically possible, such information in its possession or in the possession of the Architect or other consultant regarding the requirements of the Project, the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements-requirements, when such information is required in order for the Construction Manager to fulfill its responsibilities under this Agreement.

**§ 4.1.2** ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~

**§ 4.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs.~~If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.~~

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. ~~The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of~~ Such test, surveys, and reports are provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager's use of the information at its own risk and Construction Manager shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall exercise reasonable care so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

**§ 4.1.4.1** ~~The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, parties in writing,~~ such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 4.1.4.2** ~~The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site, site when such services are requested by the Construction Manager in writing and such services are reasonably required to complete the Project in a manner consistent with good workmanship.~~ The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 4.1.4.3** ~~The Owner, when such services are requested, requested in writing by the Construction Manager and such services are reasonably required to complete the Project in a manner consistent with good workmanship,~~ shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 4.1.5** During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable ~~promptness.~~ promptness upon written request by the Construction Manager. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.



§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, as negotiated with terms acceptable to the Owner, attached to this Agreement.

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~~The Owner shall may identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative Project to the extent permitted by law and Owner's board policy and to the extent authorized by formal action by the Board of Trustees. The Owner's representative, if one is formally designated, shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, as amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized ~~representative-representative, if any.~~ The Owner's Board of Trustees retains final approval authority over all Change Orders.~~

~~§ 4.2.1 Legal Requirements.~~ The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### ~~§ 4.3 Architect~~

~~The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.~~

...

~~§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.  
(If applicable, attach an exhibit of hourly billing rates or insert them below.)~~

**Individual or Position**

**Rate**

~~§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.~~

~~§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~

~~§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services Payments shall be made following the Construction Manager's presentation of an Application for Payment and approval and certification by the Architect of such application (or of a portion of such Application), subject to Owner's right to request a rescission or amendment of the Architect's certification, and further subject to any right Owner may have under the Contract Documents to withhold or otherwise reduce payment. Construction Manager's Applications for Payment must be proportional to services actually performed.~~

~~§ 5.2.2~~ Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (~~—~~) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager as provided by law. (Insert rate of monthly or annual interest agreed upon.)

~~—%~~ § 5.2.3 The obligations of the Construction Manager under Article 10 shall apply to the Preconstruction Phase services. Each monthly invoice shall be supported by appropriate documentation, and the Construction manager shall supply such evidence as Owner or Architect may reasonably require to substantiate the compensation claimed.

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None.

§ 6.1.4 Limitations, if any, on a Subcontractor's subcontractor's overhead and profit for increases in the cost of its portion of the ~~Work~~ Work that are included in a Change Order or Construction Change Directive:

Overhead and profit shall not exceed 10% of the cost increase reflected in the Change Order or Construction Change Directive.

§ 6.1.5 Rental rates for Construction Manager owned equipment shall not exceed ~~—~~ percent (~~—~~%) of the standard rental. The Construction Manager, along with the Guaranteed Maximum Price Proposal, shall submit its rental rates for Construction Manager-owned equipment. Compensation for these items shall not exceed the lower of (1) the standard rate paid at the place of the ~~Project~~ the Project, or (2) the rates provided in the Guaranteed Maximum Price Proposal.

...

Owner and Construction Manager recognize that time is of the essence in the Agreement and that the Owner will suffer financial loss if the Work is not completed within the time specified in the Guaranteed Maximum Price Amendment. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed within such time.

Accordingly, in the event the Construction Manager fails to achieve Substantial Completion of the Work by the agreed date, the Owner shall be entitled to liquidated damages in the amount of \$1,500 per day until the Work is substantially completed. In the event the Construction Manager fails to achieve Final Completion of the Work by the agreed date, the Owner shall be entitled to liquidated damages in the amount of \$500 per day until the Work is finally completed. In the event that the parties establish multiple required dates of Substantial Completion, these liquidated damages provisions apply independently to each required date of Substantial Completion and Final Completion. Unless the Guaranteed Maximum Price Amendment explicitly states otherwise, the Construction Manager shall achieve final completion of the Project no later than thirty (30) days from the date Substantial Completion.

It is expressly understood that these amounts are agreed upon as a fair estimate of the pecuniary damages that the Owner will incur if the Work is not completed within the agreed time. These amounts shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty.

The parties agree that the damages that the Owner would suffer due to the Construction Manager's failure to meet the necessary timelines are difficult to estimate. Each party represents that, as of the date of this Agreement, it believes the liquidated damages identified in this section to be a reasonable estimate of the damages that the Owner would suffer due to the Construction Manager's failure to meet the necessary timelines, and the Construction Manager acknowledges that such representation on its part is a substantial inducement to Owner's agreement with the terms of this Agreement.

The parties agree that the Owner may withhold any accrued liquidated damages at any time and from any payment that otherwise may be due to the Construction Manager. The parties further agree that the sum of all liquidated damages under this section shall also be deemed a credit against amounts owed by Owner to Construction Manager.

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If the Construction Manager completes the performance of the Work for less than the Guaranteed Maximum Price, the difference between (i) the total aggregate sum of the actual Cost of the Work plus the Construction Manager's fee and (ii) the Guaranteed Maximum Price shall inure in its entirety to the Owner's benefit.

...

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order ~~as provided in the Contract Documents.~~ Order. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

...

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. ~~The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.~~

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for ~~Construction.~~Construction, as amended.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for ~~Construction.~~Construction, as amended.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as amended, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 as amended shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 ~~If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the~~ In the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly. ~~the Construction Manager's Fee will be adjusted as provided for in Section 6.1.3, if the Construction Manager, Owner, and Architect agree that the scope of services has changed significantly. If, however, these parties cannot agree that the scope of services has changed significantly, the Construction Manager's Fee shall not be adjusted.~~

...

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. If Construction Manager fails to do so, it waives any right to reimbursement of such costs.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

§ 7.1.4 The Cost of Work shall not include costs incurred because of the negligence, breach of contract, or other misconduct of the Construction Manager or of any subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of the Work shall be included in the Guaranteed Maximum Price.

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§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops.

§ 7.2.1.1 To the extent allowed by law, the Construction Manager may seek to perform portions of the Work itself by submitting a bid or proposal for those portions of the Work in the same manner as all other trade contractors or subcontractors (such work is referred to in this section as "Self-Performed Work"), subject to the following provisions:

1. Self-Performed Work is payable on a "cost"-plus-"fee" basis subject to an agreed-upon guaranteed maximum price, as follows:
  - (i) The "cost" is defined as costs for the following items, but only to the extent they are properly reimbursable as Cost of the Work under this Agreement: labor performed with Construction Manager's own forces, labor burden, materials, and equipment.
  - (ii) The "fee" is defined as an amount no more than 7.5% of the "cost." The "fee" defined in this Section 7.2.1.1(ii) solely applies to the "cost" under Section 7.2.1.1(i), and in no circumstances can it be applied as the fee for Work properly categorized as "Subcontract Costs" under Section 7.3.
2. The Construction Manager's bid or proposal shall reflect the requirements of this section and shall specify a guaranteed maximum amount for the Self-Performed Work. The Owner's obligation to reimburse for Self-Performed Work shall not exceed the specified and agreed-upon guaranteed maximum price for such Self-Performed Work.
3. All savings arising from Self-Performed Work shall be applied to reduce the Guaranteed Maximum Price of this Agreement.
4. For purposes of defining Self-Performed Work, any division of Construction Manager, or any separate contractor or subcontractor that is partially owned or wholly owned by the Construction Manager, or any of Construction Manager's parent companies, employees, or employee's relatives will be considered a related party entity and any work performed by such entity will be considered Self-Performed Work by the Construction Manager.
5. No Self-Performed Work will be allowed to be performed on a lump-sum basis.
6. If the Construction Manager does not self-perform the majority of the scope of Self-Performed Work and as a result subcontracts a significant portion of the scope of work to another trade contractor, then no self-performed work fees will apply to the cost of any such work.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior written approval.

...

None.

...

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for ~~taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,~~ payroll taxes, but not any taxes for which the Owner is exempt by virtue of its status as a governmental entity, insurance as required by the Contract Documents, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall ~~remain unchanged-not increase~~ throughout the duration of this Agreement, unless the parties execute a Modification.

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Payments made by the Construction Manager to ~~Subcontractors~~ subcontractors in accordance with the requirements of the subcontracts and this Agreement. To the extent that the Construction Manager is allowed by law and by the Contract Documents to perform work with its own forces, the parties agree that those costs will not be considered

Subcontract Costs under this Section 7.3, but, rather, are subject to reimbursement to the extent provided elsewhere in this Article 7.

...

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and ~~tools,~~ tools that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

...

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and ~~supplies,~~ supplies necessary for the performance of the Work.

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

...

~~§ 7.6.1.1 Costs for self insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

~~§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.~~

~~§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.~~

~~§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3: Work.~~

...

~~§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~



~~§ 7.6.6~~ Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

~~§ 7.6.7~~ Costs Reasonable costs of document reproductions and delivery charges.

~~§ 7.6.8~~ Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents, directly resulting from the Owner's actions.

~~§ 7.6.9~~ Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

~~§ 7.6.10~~ Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

~~§ 7.6.11~~ That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

~~§ 7.7.1~~ Other costs incurred in the performance of the Work, with the Owner's prior approval.

~~§ 7.7.2~~ Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017, A201-2017 as amended.

~~§ 7.7.3~~ Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

~~§ 7.7.4~~ The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

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~~§ 7.8.2~~ If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a ~~Subcontractor~~, subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

...

- ~~.1~~ Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, ~~except as specifically provided in Section 7.2, or as may be provided in Article 14;office;~~
- ~~.2~~ Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any ~~Subcontractor or vendor, unless the Owner has provided prior approval;subcontractor or vendor;~~
- ...
- ~~.6~~ ~~Except as provided in Section 7.7.3 of this Agreement, costs~~ Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, ~~Subcontractors, subcontractors,~~ and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- ...
- ~~.8~~ ~~Costs, other than costs included in Change Orders approved by the Owner, Costs~~ that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~
- ~~.9~~ Costs for services incurred during the Preconstruction ~~Phase.Phase;~~
- ~~.10~~ Costs incurred because of the negligence, breach of contract, or other misconduct of the Construction Manager or any subcontractor;
- ~~.11~~ Delay damages or claims, including but not limited to acceleration costs; and
- ~~.12~~ Storage costs, unless with prior written approval of the Owner.

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 9.1 Those portions of the Work that the Construction Manager does not ~~customarily~~ perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall furnish to Owner and Architect for the Owner's approval prior to any public advertisement or solicitation for the portion of the Work, the evaluation criteria that the Construction Manager proposes to use in recommending qualified trade contractors or subcontractors for each portion of the Work that will provide the best value for the Owner. After acceptance of the GMP proposal, the Construction Manager shall obtain bids from Subcontractors, subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. All subcontracts for the Project shall be awarded in accordance with the Texas Government Code, Chapter 2267, Subchapter F.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; ~~and~~(3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, and (4) offers the best value to the Owner, then the Construction Manager may ~~require request~~ that a Change Order be issued

to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 9.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the ~~Subcontractor~~ subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

**§ 9.3** The Construction Manager shall include the following specific notices in the information to proposers, along with any other notices required by law:

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate; and
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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The Construction Manager shall keep full and detailed records and accounts related to the ~~Cost of the Work, Project,~~ and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors ~~shall, during regular business hours and upon reasonable notice, shall~~ be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, ~~Subcontractor's proposals, Subcontractor's subcontractor's proposals,~~ subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ~~three~~ twelve (12) years after final payment, or for such longer period as may be required by law.

All records shall be maintained in accordance with generally accepted accounting principles and procedures, consistently applied. Subcontractors retained by the Construction Manager on a cost-plus basis shall have the same obligations to retain records and cooperate with audits as are required of the Construction Manager under this Article 10.

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**§ 11.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract ~~Documents.~~ Documents, subject to Owner's right to request a rescission or amendment of the Architect's certification, and further subject to any right Owner may have under the Contract Documents to withhold or otherwise reduce payment. .

**§ 11.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, ~~or as follows:~~

month.

**§ 11.1.3** ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the~~



amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.) The Architect will, within seven days after receipt of the Construction Manager's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Paragraph 9.5 of the AIA Document A201-2017, as amended by the parties. Owner shall make payment for amounts properly due pursuant to the requirements of the law. Notwithstanding such certification for payment by the Architect however, Owner shall be entitled to withhold payment to such extent as may be necessary in the Owner's opinion, reasonably supported, to protect the Owner from loss for which the Construction Manager is responsible, including loss of the reasons listed in 9.5.1 of the AIA Document A201-2017, as amended. Such withholding of such payment by owner shall not be deemed a breach of the Contract Documents nor a failure to make timely payment.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. Additionally, with each Application for Payment, the Construction Manager shall submit a "buyout report" that accurately reflects the status (including monetary amounts) of all contracts entered into by the Construction Manager for performance of the Work.

...

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect. Architect and Owner.

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§ 11.1.7 In accordance with AIA Document A201-2017 as amended and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

...

- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor-subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; A201-2017 as amended;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 4.1.8-11.1.8; and
- .7 Liquidated damages as provided in this Agreement, except that Owner may elect to subtract such amounts from any subsequent pay application.

...

§ 11.1.8.1 For each progress payment made prior to ~~Substantial~~Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

...

Five percent (5%)

...

None.

...

None.

§ ~~11.1.8.3~~ Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:  
*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to ~~Subcontractors,~~ subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In ~~taking action on submitting~~ the Construction Manager's Applications for Payment ~~the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.~~ the Construction Manager shall be responsible for all errors and omissions.

§ 11.1.13 If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

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§ 11.2.1 Final payment, ~~constituting the entire unpaid balance of the Contract Sum,~~ payment shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, as amended, and to satisfy other requirements, if any, which extend beyond final payment;

- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for ~~Payment~~; Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other personnel; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section ~~11.2.2.2~~; 11.2.2.2 and approved by the Owner.

**§ 11.2.2** Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit. It is the Construction Manager's responsibility to ensure that the final accounting it submits is full and complete. Owner may deduct from any payment otherwise owed to Construction Manager any amount that Owner or Owner's auditor determines is not supported by the Construction Manager's final accounting. Additionally, any amount paid by the Owner in excess of that required by this Agreement shall be, at Owner's election, either withheld from any payment otherwise due to Construction Manager, or returned by Construction Manager within seven days of the date Construction Manager becomes aware of such overpayment.

**§ 11.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within ~~40-30~~ days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document ~~A201-2017~~; A201-2017 as amended. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document ~~A201-2017~~; A201-2017 as amended. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 11.2.2.3** If the Owner's auditors' or other agents or representatives of the Owner's report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document ~~A201-2017~~; A201-2017, as amended. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors or other agents or representatives of the Owner becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner ~~shall~~ shall, subject to all of the Owner's rights to withhold payment or otherwise deduct amounts, pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

otherwise allowed by law.

**§ 11.2.4** ~~If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

Payments due and unpaid under the Contract shall bear interest ~~from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~  
*(Insert rate of interest agreed upon, if any.)*

~~—%—~~ as provided by law.

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**§ 12.1.1** Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply. A201–2017, as amended. The Claims process set forth in this Article 12 and in Article 15 of the applicable A201 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

**§ 12.1.2** The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

as amended.

...

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, A201–2017 as amended, the method of binding dispute resolution shall be as follows:

...

- Arbitration pursuant to Article 15 of AIA Document A201–2017 N/A
- Litigation in a court of competent ~~jurisdiction~~ jurisdiction, subject to any other requirements that may need to be satisfied prior to the commencement of litigation.
- Other: *(Specify)*
- N/A

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

### **§ 12.3. Contractual Adjudication Procedure for all Claims and Disputes**

- .1** The requirements of this Section 12.3 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.
- .2** **Pre-Litigation Grievance and Mediation.** Any claim, dispute or other matter in question that Construction Manager has against Owner shall be subject to full exhaustion of the grievance procedure found in Owner’s GF (LOCAL) policy and non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by Construction Manager. In the case of any such claim, dispute, or other matter, by the Construction Manager against the Owner, including, but not limited to, any claim that the Owner has breached a contract, the Construction Manager may not file a lawsuit or demand mediation until the complaint procedure found in Owner’s GF (LOCAL) policy has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit A-1. The Construction Manager’s failure to timely file a grievance under policy GF (LOCAL), meet any requirement of this Article 12, or otherwise fully exhaust policy GF (LOCAL) in accordance with the policy’s requirements is a failure to adhere to contractual adjudication procedures, a failure to exhaust remedies, a failure to fulfill conditions precedent,

constitutes waiver, and is a bar to suit against the Owner.

- a. The timelines under Policy GF (LOCAL) are amended for purposes of this Agreement as follows: Construction Manager's complaint must be reduced to writing and filed within ninety (90) calendar days of the date the Construction Manager first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint. If the Construction Manager fails to meet this timeline, the Construction Manager will have failed to exhaust this remedy, will have failed to adhere to this contractual adjudication procedure, will have failed to fulfill conditions precedent to suit, will have waived the complaint, and will be barred from suing the Owner.
- b. Construction Manager agrees that, in order to fully exhaust its remedies under policy GF (LOCAL) and otherwise comply with this Section 12.3, Construction Manager must identify and articulate in writing the specific factual and legal basis for its claims. Any basis that is not identified and articulated by the Construction Manager as part of its complaint under GF (LOCAL) is waived by the Construction Manager and may not be asserted in any subsequent proceeding against the Owner.
- c. The following are each an independent condition precedent to the institution of civil proceedings by the Construction Manager against the Owner concerning the contested matter: 1) full exhaustion of claims through Owner's GF (LOCAL) policy as described herein, 2) full exhaustion of the Claims process referenced in this Agreement and the applicable A201, 3) a written demand by the Construction Manager for mediation, and 4) good faith and full participation in the mediation process.
- d. Following the full exhaustion of claims through Owner's GF (LOCAL) procedure, and upon receipt by Owner of Construction Manager's written demand for mediation, Owner may, at its option, either proceed with non-binding mediation of the dispute, or provide written notice to Construction Manager of Owner's decision to waive its right to compel such mediation. Owner's voluntary participation in any mediation or any other settlement discussions shall not be construed as a waiver of any failure by Construction Manager to exhaust remedies, follow contractual adjudication procedures, or otherwise comply with the Contract Documents. If the parties participate in mediation, the parties shall share the mediator's fee and any filing fees equally.

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§ 13.1.1 ~~If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the Owner's convenience and without cause~~

§ 13.1.2 ~~In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement, solely as provided in Article 5, and shall have no other recovery. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.~~ Section 5.1

...

§ 13.1.4 ~~In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, compensated for Preconstruction Phase services. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.~~

§ 13.1.5 ~~If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase pursuant to a written agreed-upon Work Authorization Amendment, but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as~~



follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work ~~incurred-performed~~ by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that ~~Section,~~ section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; ~~and~~
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase ~~services,~~ services; ~~and~~
- .4 Credit Owner for claims, credits, offsets, and deductions to which the Owner is entitled under the Contract Documents.

§ 13.1.6 The Owner shall also pay the Construction ~~Manager fair compensation,~~ Manager, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document ~~A201-2017.~~ A201-2017, as amended.

...

- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that ~~Section,~~ section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; ~~and~~
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document ~~A201-2017.~~ A201-2017; and
- .5 Credit Owner for claims, credits, offsets, and deductions to which the Owner is entitled under the Contract Documents.

§ 13.2.2.2 The Owner shall also pay the Construction ~~Manager fair compensation,~~ Manager, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

None.  
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The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2017~~; A201-2017 as amended; in such case, the Guaranteed Maximum Price and Contract Time ~~shall~~ may be increased as provided in Article 14 of AIA Document ~~A201-2017~~, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement. ~~A201-2017 as amended.~~

#### **§ 13.4. Damages**

In no event shall the Construction Manager be entitled to recover for overhead, lost profits, benefit of the bargain damages, consequential damages, lost opportunity costs, impact damages, damage to reputation, financing costs, loss of productivity, stand-by time, demobilization costs, termination costs, loss of surety bonding capacity, or other damages by reason of any termination or suspension by Owner or the Construction Manager. Construction Manager expressly waives any such claims. This Section 13.4 shall not be interpreted to support any claim for damages by the Construction Manager.

**§ 14.1** Terms in this Agreement shall have the same meaning as those in ~~A201-2017~~; A201-2017, as amended. Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of ~~A201-2017~~; A201-2017 as amended, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2017, as amended.

The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

#### **§ 14.3.1 Preconstruction Phase**

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

**§ 14.3.1.1** Commercial General Liability with policy limits of not less than —(\$ —) for each occurrence and —(\$ —) in the aggregate for bodily injury and property damage.

~~§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than —(\$ —) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

~~§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than —(\$ —) each accident, —(\$ —) each employee, and —(\$ —) policy limit.~~

~~§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate.~~

~~§ 14.3.1.6 Other Insurance~~

~~(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)~~

**Coverage**

**Limits**

~~§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.~~

~~§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.~~

~~§ 14.3.2 Construction Phase~~

~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™ 2019, 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, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~

~~§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™ 2019 Exhibit B, and elsewhere in the Contract Documents.~~

~~§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201 2017, may be given in accordance with AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:~~

~~(If other than in accordance with AIA Document E203 2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)~~

**§ 14.5.1 The right to the recovery of attorney's fees available under Texas Local Government Code Chapter 271, Subchapter I is hereby waived.**

**§14.5.2 Prior to releasing monthly payments to subcontractors, the Construction Manager shall call the suppliers of each subcontractor to determine if any of the subcontractors have an outstanding balance with a supplier. In the event that a subcontractor has an outstanding balance with a supplier, the Construction Manager shall joint check such outstanding balance and receive a release from the supplier.**



§ 14.5.3 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.5.4 Construction Manager shall require all construction workers, whether Construction Manager's own forces, or the forces of Construction Manager's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

§ 14.5.5 Construction Manager shall require all construction workers, whether Construction Manager's own forces or the forces of Construction Manager's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations may be towed at the vehicle owner's sole expense.

§ 14.5.6 Construction Manager shall follow, and shall require all employees, agents or subcontractors to follow all applicable ordinances of the municipality or municipalities in which the Project is located, including the tree ordinance, if applicable. If not covered by the municipal tree ordinance, Construction Manager shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 14.5.7 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

§ 14.5.8 Construction Manager stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically required by law.

§ 14.5.9 This Agreement is subject to all applicable federal and state laws, rules, and regulations.

§ 14.5.10 This Section 14.5.10 only applies if Construction Manager has more than 10 full time employees and the Agreement is valued at \$100,000 or more. By executing this Agreement, Construction Manager verifies the following:

- .1 as required by Texas Government Code 2270.002: Construction Manager verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.
- .2 as required by Texas Government Code 2274.002, Construction Manager verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.
- .3 as required by Texas Government Code 2274.002, Construction Manager verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

§ 14.5.11. The Construction Manager agrees and stipulates that the unpaid portion of the Contract Sum (up to the Guaranteed Maximum Price established in the GMP Amendment and as subject to modification by means of a Modification as defined in the A201 General Conditions applicable to the Project), is the absolute maximum amount that could ever possibly be due and owing under this Agreement from Owner to Construction Manager. The Construction Manager hereby waives any claim against Owner for any amount in excess of the amount stipulated in this Section 14.5.11. The Construction Manager's agreement, stipulation, and waiver under this section are each a material inducement to Owner's agreement.

## **§ 14.6 Contracting Information**

§ 14.6.1 This Section 14.6 applies only if, per Texas Government Code §552.371(a), (1) the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body; or (2) the Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services

by the Owner in a fiscal year of the Owner.

**§ 14.6.2** Pursuant to Texas Government Code §552.372, the Construction Manager must:

- (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract;
- (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and
- (3) on completion of the contract, either:
  - (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or
  - (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

**§ 14.6.3** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor or vendor agrees that the contract can be terminated if the Contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

**§ 14.6.4** "Contracting information" is defined by Texas Government Code §552.003(7) and means the following information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor:

- (A) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body;
- (B) solicitation or bid documents relating to a contract with a governmental body;
- (C) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract;
- (D) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and
- (E) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

**§ 14.7** The Construction Manager shall not execute a contract with any subcontractor that contains an agreement or provision to arbitrate claims. In the event that a subcontractor seeks to arbitrate a claim arising out of or relating to the Contract Document or this Project, Construction Manager shall not seek to join in such or any other arbitration proceeding relating to this Project.

**§ 14.8** Construction Manager agrees to waive any claim it has or may have against the Owner, the Architect, and their respective employees and officers, arising out of or in connection with the administration, evaluation, or recommendation of any bid or proposal; waiver of any requirements under the procurement documents related to this Project; the Contract Documents; acceptance or rejection of any bids or proposals; and award of the Contract.

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- .1 This modified AIA Document A133™–2019, 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

...

- .3 — AIA Document A133™ 2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 — AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203–2013 incorporated into this Agreement.)

~~6~~ Other Exhibits:  
(Check all boxes that apply.)

AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
(Insert the date of the E234 2019 incorporated into this Agreement.)

Supplementary and other Conditions of the Contract:

| Document                        | Title   | Date        | Pages |
|---------------------------------|---|-------------|-------|
| <u>Construction, as amended</u> |   |             |       |
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|                                 | <u>Exhibit A-1 – Owner’s GF (LOCAL) Board Policy</u>  |             |       |
|                                 | <u>Exhibit B – Prevailing Wage Rate Schedule (see Section 3.4.1.1 of the A201 General Conditions, as amended)</u> |             |       |
| ...                             |   |             |       |
| <u>DATE</u>                     |   | <u>DATE</u> |       |

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:27:26 CT on 11/21/2022 under Order No. 2114280461 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, 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, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

*(Name and location or address)*

NOT FOR EXECUTION – FOR PROCUREMENT PURPOSES ONLY

**THE OWNER:**

*(Name, legal status and address)*

Carthage Independent School District  
#1 Bulldog Drive  
Carthage, Texas 75633

**THE ARCHITECT:**

*(Name, legal status and address)*

**TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
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- 5 SUBCONTRACTORS
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- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the executed Agreement, this modified AIA Document A201—2017, General Conditions of the Contract for Construction, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

This AIA Document A201-2017, General Conditions of the Contract of Construction, as modified, shall be the General Conditions for the Project and supersedes any prior general conditions and/or supplemental conditions for the Project.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This section does not in any way limit the Architect's or the Contractor's duties to the Owner under their respective agreements with the Owner.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2.



## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence:

1. The Agreement
2. This amended A201-2017 General Conditions of the Contract for Construction
3. Addenda, with the most recent Addenda taking precedence over earlier Addenda
4. Specifications
5. Drawings

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined by a court of competent jurisdiction in an action to construe the Contract Documents that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised by the court to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the Cost of the Work the greater quantity or better quality, or the most stringent requirements. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of the Owner. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

## § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

## § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

## § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

## § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed by means of in-person delivery or certified mail. Where one party attempts to provide notice by means of certified mail, but the notice is returned by the US Postal Service, the party may serve notice via first class mail.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

## § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will negotiate the terms of and execute an agreed version of AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

*(Paragraphs deleted)*

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. It is expressly acknowledged that Owner is a governmental entity, and as such, only its Board of Trustees, acting as a body corporate, may take any action that would bind the Owner.

*(Paragraphs deleted)*

§ 2.1.3 The parties acknowledge that no lien rights exist with respect to public property and agree that no lien may be filed related to the Project.

§ 2.1.5 The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications and other Contract Documents, and has no duty to notify Contractor of same. By entering into the Contract Documents or any Agreement with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Contract Documents.

### § 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner may retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

*(Paragraph deleted)*

§ 2.3.4 If requested in writing by the Contractor prior to the start of the Work, the Owner shall furnish surveys known to the Owner. Other than metes and bounds noted in the legal description of the site, the Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines, or the presence or absence of easements.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services.

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§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner, upon written request, shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2, fails to correct defective work, repeatedly fails to carry out Work in accordance with the Contract Documents, fails to complete the Work on time, or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's rights under Section 12.2.

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. The Architect shall also prepare and execute a Construction Change Directive reflecting the change in the Work and the adjustment of the Contract Sum and Contract Time, if any. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor must file a Claim pursuant to Article 15. If Contractor fails to file a Claim pursuant to Article 15, it waives any argument or claim regarding this issue.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner conducted in accordance with the Contract Documents, the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 The Contractor 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 tools, materials, supplies, equipment and labor required to timely 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, public, and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
- .4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 By executing the Agreement, the Contractor represents and warrants to the Owner and the Architect that it has carefully examined the plans, Construction Documents, specifications, and the site of the Work, and that from its own investigations, it has been satisfied as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or matters that may in any way affect the Work or its performance. No allowance on the Contractor's behalf will be made by the Owner for any error or negligence by the Contractor failing to visit the site or failing to thoroughly study and compare all of the Construction Documents prior to submitting a proposal or bid. Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor his warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for his position. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. The Contractor 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, except when the Contractor recognized, or reasonably should have recognized, such error, inconsistency, omission or difference and failed to report it to the Architect

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor 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. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to the lines, cables, pipes, and pipelines identified to Contractor.

§ 3.2.6 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and only if applicable, Contractor shall review the appropriate AHERA and hazardous materials surveys for the particular campuses involved in the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. If applicable, Contractor shall comply with U.S. Environmental Protection Agency rules concerning renovating, repairing or painting work in schools built prior to 1978 involving lead-based paint.

§ 3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above requirements of the Contract Documents and this causes the Architect or his Consultants to expend an unreasonable amount of time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. This section does not create any duty on the Owner to pay any amount to the Architect.

§ 3.2.8 The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Construction and Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including:

- .1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;
- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the

Owner's alcohol free, drug free, and weapon free policies and zones, which will require compliance with these policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall also require adequate and appropriate dress of Contractor's employees, Subcontractors, and all other persons carrying out the Contract.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all Sub-contractors and Sub-sub-contractors.

§ 3.3.5 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Contractor shall fully comply, and shall require any applicable Subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
- .2 The special shoring requirements, if any, of the Owner;
- .3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system; and
- .4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 3.3.7 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Contractor the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor.

§ 3.4.1.1 It is required that the Contractor and Subcontractors on the Project pay not less than the prevailing wage rates adopted by Owner pursuant to Texas Government Code Chapter 2258 for wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them. The wage rates adopted by Owner under Chapter 2258 are specified in Exhibit B of the Agreement. Any workers not included in the adopted schedule shall be properly classified and paid no less than the rate of prevailing wages in the locality of the Work at the time of construction. Owner shall be paid by Contractor \$60.00 per violation, per day or part of a day, that a worker is paid less than the adopted prevailing wages.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.



§ 3.4.2.1 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 Contractor; (iii) and when, in the judgment of the Owner, in consultation with the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittals 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 for the substitution; (ii) a written explanation of the reasons the substitution should be considered, 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; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than fifteen (15) working days for review. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information.

§ 3.4.2.3 Whether or not the Owner or the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor shall not allow any person who has been convicted of a felony or sex offense to carry out any portion of the Work or to be present on Owner's property.

§ 3.4.5 Pursuant to Texas Education Code Section 44.034, Contractor must give advance written notice to the Owner if the Contractor or an owner or operator of the Contractor has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Contractor failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

§ 3.4.7 In addition to other requirements, Contractor will at least annually obtain criminal history record information that relates to any employee, agent, or subcontractor of the Contractor or a Subcontractor, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location where students are likely to be present. Contractor shall assume all expenses associated with the background checks and shall immediately remove any employee, agent or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present."

## § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is the Contractor's responsibility), improper operation, or normal wear and tear and normal usage, but such exclusions shall only apply after Owner has taken occupancy of the damaged or defective part of the Project. If required by the Architect, the

Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor's express warranties are in addition to, and not in lieu of, Owner's other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect by the Contractor on the manufacturer's or supplier's approved forms for delivery to the Owner. The warranties set out in this subparagraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner.

§ 3.5.3 In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of defective Work or replacement of the defective items, without cost to the Owner. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy defects as covered by Contractor's warranty. If Contractor does not respond to the written notice, either by beginning corrective work or notifying Owner in writing regarding when corrective work will begin, within ten (10) days of Contractor's receipt of the written notice, then the Owner may take measures to correct the Work and Contractor will be obligated to reimburse Owner's costs. The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

§ 3.5.4 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of:

- .1 an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or
- .2 an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or
- .3 such further reasonable proof as is required by the Architect.

§ 3.5.5 The Contractor agrees to assign to the Owner at Final Completion of the Work, such assignment to be effective no later than Final Completion, any and all manufacturers' warranties relating to materials and labor used in the Work. Contractor further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties. All forms will be required to be submitted prior to Final Payment.

§ 3.5.6 The warranties of Contractor provided herein shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

§ 3.5.7 Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the requirements under Section 12.2.2.1 herein on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner and Architect. Prior to termination of the period under Section 12.2.2.1 herein, Contractor shall accompany Owner and Architect on re-inspection of each Work in the Project and Contractor shall be responsible for correcting any items which are observed or reported during the period under Section 12.2.2.1 herein. Contractor shall prosecute such Work under Section 12.2.2.1 herein without interruption until accepted by Owner and Architect, even though such Work should extend beyond the period under Section 12.2.2.1 herein. If Contractor fails to provide the schedules to Owner and Architect, Contractor's obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.

**§ 3.5.8** Without limitation to any other duties of the Contractor, Contractor is not entitled to Final Payment until it does the following:

- .1 Obtain duplicate original warranties, executed by all Subcontractors, making the dates of beginning of the warranties the Date of Final Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties no later than the Date of Final Completion;
- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required;
- .4 Bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers;
- .5 Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;
- .6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified;
- .7 Separate each warranty with index tab sheets keyed to the Table of Contents listing; and
- .8 Deliver warranties and bonds in the form described above, to the Architect who will review same prior to submission to the Owner.

### **§ 3.6 Taxes**

Owner is an exempt entity under the tax laws of the State of Texas. Texas Tax Code § 151.309; 34 TAC § 3.322. Contractor shall fulfill the requirements of the Texas Tax Code § 151.309, § 151.310, § 151.311 and 34 TAC § 3.291; 3.287. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept a Certificate of Exemption from the Owner, pursuant to Texas Tax Code § 151.054(e); § 151.155; and 34 TAC § 3.287. Contractor shall obtain Certificates of Resale from Contractor's suppliers. Texas Tax Code § 151.154, 34 TAC § 3.285. Failure of Contractor or any Sub-contractor to obtain Certificates of Resale from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work when it knows or reasonably should know it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an

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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 Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than three days after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If the Contractor disputes the Architect's determination or recommendation, the Contractor must submit a Claim as provided in Article 15, or else the Contractor waives any claim related to this issue.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

**§ 3.7.6** The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Contractor shall inform the Architect at once when the Owner's participation is required, and the Architect shall immediately notify the Owner. Connections for temporary and permanent utilities and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed in writing. If the Work is new construction, then payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion.

### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

**§ 3.8.4** When performing Work under allowances, Contractor shall solicit and receive not less than three written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the Owner.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Paragraph 9.8, have been completed or

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corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion.

*(Paragraph deleted)*

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable objection. The Contractor shall not change the superintendent without the Owner's consent. Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Paragraph 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion.

**§ 3.9.4** Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under general conditions for such day.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Owner or Architect's failure to object to Contractor's submitted schedule does not absolve Contractor of any duties.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.10.4** The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the Project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date.

### **§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and

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similar required submittals. These shall be in electronic form and paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Contract Documents remain the Contractor's responsibility.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued specifically authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

**§ 3.14.3** No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only be performed by those skilled in performing the original Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. The Contractor shall clean up at least weekly, or more often as needed to maintain a safe work site, or as otherwise directed by the Owner. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

**§ 3.15.4** After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and



replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. THE CONTRACTOR WAIVES AND RELEASES CLAIMS AGAINST THE OWNER AND ARCHITECT, AND SHALL DEFEND AND INDEMNIFY OWNER AND ARCHITECT FROM SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, AND SHALL HOLD HARMLESS THE OWNER AND ARCHITECT FROM LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, CONTRACTOR, SHALL NOT BE RESPONSIBLE TO ARCHITECT FOR SUCH DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS OR OTHER DOCUMENTS PREPARED BY THE ARCHITECT AND SHALL NOT BE RESPONSIBLE TO OWNER IF OWNER REQUIRES A PARTICULAR DESIGN, PROCESS OR PRODUCT THAT CONSTITUTES A COPYRIGHT VIOLATION. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW THE CONTRACTOR WAIVES AND RELEASES CLAIMS AGAINST, AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF) INCLUDING, BUT NOT LIMITED TO, LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, OR ANY OTHER PARTY OR ENTITY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY A JUDGMENT DEBTOR UNDER THE LAWS OF THE STATE OF TEXAS.**

**§ 3.18.1.1 IN ADDITION TO THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AND AGENTS AND EMPLOYEES OF ANY OF THEM (THE "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS,**

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**DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED , OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR OWNER UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.**

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under insurance policies, workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The obligations of the Contractor under this Section 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them, caused by or resulting from: (1) defects in plans, designs, or specifications prepared, approved, or used by the Architect or engineer; or (2) negligence of the Architect or engineer in the rendition or conduct of professional duties called for or arising out of the construction contract and the plans, designs, or specifications that are a part of the construction contract; and (3) arising from: (a) personal injury or death; (b) property damage; or (c) any other expense that arises from personal injury, death, or property damage, or as otherwise limited by Texas Civil Practice & Remedies Code Section 130.001 *et seq.*

§ 3.18.4 Contractor agrees to indemnify and to hold the owner's other contractors harmless from all claims for bodily injury and property damage to the same extent as provided in Section 3.18.1 above.

§ 3.18.5 The provisions of Section 3.18 in its entirety shall survive the completion, termination or expiration of this contract.

§ 3.18.6 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect. It is understood and agreed that Subparagraph 3.18.1 above is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

§ 3.19 ANTITRUST VIOLATION. To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 *et seq.* The Contractor shall include this provision in its agreements with each Subcontractor and supplier. Each Subcontractor shall include such provisions in agreements with Sub-subcontractors and suppliers.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Contractor agrees that Owner is not responsible for any fault or failure of the Architect and hereby waives any claims against Owner arising from any fault or failure of the Architect. The Contractor further acknowledges that the Architect is not the agent of the Owner and that the Architect has no authority to bind the Owner.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 The Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Contract Documents by the duties, responsibilities, or activities of the Architect.

#### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will not have authority to act on behalf of the Owner, unless Owner's Board of Trustees has formally authorized the Architect to act on behalf of the Owner.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect, if any, for additional site visits made necessary by the fault, neglect, or request of the Contractor.

#### § 4.2.4 Communications

The Owner and Contractor shall endeavor to communicate with each other through the Architect. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. The Architect shall report in writing to the Owner known deviations from the Contract Documents and any known non-conforming Work. Architect shall reject non-conforming Work. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. Performance of any additional inspection or testing which would result in additional cost to the Owner shall require advance notice to and approval of the Owner. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the



Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site.

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

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Contractor shall procure all subcontracts in accordance with Texas Education Code Chapter 44, Subchapter B, and Texas Government Code Chapter 2269, as applicable. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. When the parties agree on a proposed substitute Subcontractor then, the Contract Sum and Contract Time may, by mutual written agreement, be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.1 SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER, ITS ARCHITECTS AND/OR ENGINEERS, CONTRACTOR, ITS SUBSIDIARIES, THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS FOR WHICH SUBCONTRACTOR IS RESPONSIBLE INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CLAIMS FOR WHICH THE SUBCONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER MAY BE CLAIMED TO BE LIABLE AND LEGAL FEES AND DISBURSEMENTS PAID OR INCURRED TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH FOR WORK TO BE PERFORMED UNDER THIS SUBCONTRACT. IT IS EXPRESSLY UNDERSTOOD THAT THE RIGHTS ARTICULATED IN THIS ARTICLE ARE NOT LIMITATIONS ON ANY OTHER RIGHT CONTAINED IN THIS AGREEMENT OR AT COMMON LAW. THIS SECTION SHALL BE INTERPRETED TO APPLY TO THE FULLEST EXTENT ALLOWED BY LAW.**

§ 5.3.2 Contractor understands and agrees that the language included in § 5.3.1 above is in addition to the rights and responsibilities of the Contractor under the Contract Documents, and nothing contained in the above language shall be construed to limit, reduce or abridge the Contractor's liability arising from or in connection with any property damage, bodily injury, or any other cause of action related to this Project for which Contractor may be held liable, and that this language does not limit, reduce, or abridge Contractor's duty to defend and indemnify Owner in accordance with § 3.18 of this Agreement.

### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract.

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*(Paragraphs deleted)*

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and with Separate Contractors.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

*(Paragraph deleted)*

### **§ 6.2 Contractor's Responsibility**

**§ 6.2.1** It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's Separate Contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction.

**§ 6.2.3.3** All costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Contract Documents, will be borne by the Contractor.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The parties stipulate that (1) the term "change order" as used in Texas Local Gov't Code 271.153(2) exclusively means a fully executed Change Order as defined herein, and (2) the phrase "additional work the contractor is directed to perform by a local governmental entity in connection with the contract" exclusively refers to additional work that is the subject of a fully executed Construction Change Directive as defined herein.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner (based on the specific approval of each particular Change Order by the Owner's Board of Trustees), Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

§ 7.2.1 A Change Order is AIA Document G701(as it may be modified) prepared by the Architect or Owner and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all claims, whether direct or indirect, arising from the subject matter of the Change Order.

§ 7.2.3 **Pricing Change Order Work.** The amounts that Contractor and/or its Subcontractor adds to a proposed Change Order for profit and overhead will be considered by Owner before approval is given. The amounts established hereinafter are the maximums that will be considered for proposed Change Orders.

§ 7.2.3.1 For Work performed by its forces, Contractor may propose its actual costs paid for materials, the total amount of its actual wages paid for labor, plus its actual cost paid for State and Federal payroll taxes and for workers' compensation and comprehensive general liability insurance, plus its actual additional bond and builder's risk insurance cost if the change directly results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to propose to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general Home Office expenses, and no separate allowance will be made therefor.

The maximum Contractor mark-up for overhead, profit or fee for Work performed by the Contractor's own forces shall not exceed 10% of the cost of the Change in the Work. The maximum Contractor mark-up for overhead, profit or fee for supervision of Work performed by subcontractors' forces shall not exceed 5% of the cost of the change in the Work. The maximum subcontractor mark-up for overhead, profit or fee for Work performed by the subcontractor's forces shall not exceed 10% of the cost of the Change in the Work. In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the Work, exceed 15% of the total cost of the Change in the Work.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.



§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 at the Owner's election, either as provided in Section 7.3.4 or in 7.2.3 and 7.2.3.1 above.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor must make a Claim in accordance with applicable provisions of Article 15 or else it waives any claim related to this issue. If a Construction Change Directive is issued pursuant to Section 2.5 and the Contractor disagrees with the adjustment in the Contract Sum or adjustment of the scope of the Work, Contractor shall make a Claim within ten (10) days of the date it receives notice of the Construction Change Directive. If the Contractor fails to make a Claim within ten (10) days of the date it receives notice of the Construction Change Directive, then the Contractor is deemed to have accepted the terms of the Construction Change Directive and the Construction Change Directive shall have the same force and effect as a Change Order.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect plus an allowance for reduced overhead and profit. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

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reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall File a Claim under Article 15. If the Contractor performs the Work set forth in the Architect's order for a minor change without filing a Claim that provides prior notice to the Architect and Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### ARTICLE 8 TIME

#### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion or the Date of Final Completion.

#### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. Under no circumstances shall the Owner be required to pay the Contractor any compensation for such delays.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Contractor's failure to file such a Claim waives any claim or demand related to this issue.

§ 8.3.3 This Agreement does not permit the recovery of damages by the Contractor for any delay or disruption, including, but not limited to, delays due to bad weather or acts of God. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be changed by a fully executed Change Order or Construction Change Directive. The portion of the Contract Sum that has been earned by the Contractor as provided herein but remains wrongfully unpaid by the Owner is the maximum amount that may ever be due and owing from Owner to Contractor under the Contract Documents.

*(Paragraph deleted)*

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G702Cmc and G703 shall be used.

§ 9.2.2 In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703, and shall include the following:

- .1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.
- .2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.
- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).
- .4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.
- .5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.
- .6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Contractor must submit 24 photographs of the construction site that depict the Work subject to each Application for Payment. Without limiting any of Owner's rights under this Agreement, Owner's payment of any amount to Contractor does not constitute a waiver of any claims arising out of or related to the Work for which payment is being sought, whether or not any supporting data or materials included with the Application for Payment depicts or discloses any information that serves as the basis for those claims.



§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

### § 9.3.2

Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

§ 9.3.4 Contractor shall submit Applications for Payment in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the

Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.4.3** The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract time.

**§ 9.5.2** When the Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor must submit a Claim in accordance with Article 15. Contractor's failure to submit a Claim in accordance with Article 15 waives any claim or argument by Contractor related to this issue.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve

sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as allowed by contract.

## **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided by law, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. In compliance with Texas Government Code Section 2251.022, the Contractor 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 Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide copies of such Subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, then the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** - The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## **§ 9.7 Failure of Payment**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by litigation, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. However, in order to stop or suspend the Work, the Contractor must

strictly comply with Chapter 2251 of the Texas Government Code in all respects, notwithstanding any other provision in the Contract Documents. The Contract Time shall be extended appropriately.

**§ 9.7.3** If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

- .1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or
- .2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

### **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's normal school operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work shall be completed within the greater of (1) 30 days, or (2) the Agreement's required deadline for final completion. Contractor shall complete Owner's Substantial Completion Certificate.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect shall supply a copy of this list to the Owner and will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have



accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**§ 9.9.4** In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

#### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Payment of retainage is not due until the Contractor achieves final completion of the entire Work and meets all conditions for final payment.

**§ 9.10.2** As a condition precedent to the Owner's issuance of final payment and payment of any remaining retained percentage, Contractor must submit to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (2) a copy of the insurance policy evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect; (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, as well as signed warranties for all products and services related to the Project; (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; (7) written certifications required by Section 10.5, 10.6, and 10.7; (8) final list of subcontractors (AIA Document G705); (9) Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at [https://tea.texas.gov/sites/default/files/cert\\_2004.pdf](https://tea.texas.gov/sites/default/files/cert_2004.pdf); (10) Maintenance and Instruction Manuals; (11) Owner's Final Completion Certificate; and (12) record drawings and "as built" drawings. At the completion of the Project, the Contractor shall submit one complete set of "as built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Final payment by Owner is conditioned upon fulfillment of all obligations set forth in this Section 9.10.2 and receipt of a Certificate for Payment from the Architect as set forth in Section 9.10.1.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 claims then pending.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee.

§ 9.10.6 Owner shall deduct accrued liquidated damages from Final Payment to Contractor. The total accrual of liquidated damages shall be based on the dollar amounts established in the Agreement, , date of Substantial Completion established in the Certificate of Substantial Completion, and the date of the Final Certificate for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work, school personnel, students, and other persons on Owner's premises, and other persons who may be affected thereby, including the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as other buildings and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable full protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.



§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor must make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. Contractor's failure to make a Claim as required by this agreement waives any claim or argument by Contractor regarding this issue. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

*(Paragraphs deleted)*

### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor 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 Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately.

§ 10.3.3 IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SUBPARAGRAPH 3.18.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site.

§ 10.3.5 The Contractor shall be responsible for the cost and expense (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its

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obligations under Section 10.3.1. In the event that Owner incurs such costs and expenses, Contractor shall reimburse the Owner for such costs and expenses.

*(Paragraph deleted)*

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

#### **§ 10.5 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS**

**§ 10.5.1** Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

**§ 10.5.2** Final Payment shall not be made until this written certification has been received.

#### **§ 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM**

**§ 10.6.1** Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".

**§ 10.6.2** The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

#### **§ 10.7 HAZARDOUS MATERIALS CERTIFICATION**

**§ 10.7** The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local 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 Contractor shall provide this written certification as part of submittals under the section in the Project Manual related to contract closeout.

### **ARTICLE 11 INSURANCE AND BONDS**

**§ 11.0.1** No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Compliance with this Article 11 by Contractor is a condition precedent to any payment from Owner to Contractor. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement.

**§ 11.0.2** Satisfactory evidence of insurance required by this Article shall be provided to Owner and Architect not later than five business days after execution of the Contract by Owner. Satisfactory evidence shall include copies of all required insurance policies, declarations, and endorsements themselves. In addition, Contractor shall also provide a duly-executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations and additional endorsements, as they are provided to Contractor.

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§ 11.0.3 All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, [www.ambest.com](http://www.ambest.com), and that permits waivers of subrogation.

§ 11.0.4 All insurance required herein shall name the Owner, its officers, employees, representatives or agents, as an additional insured, except Contractor's workers' compensation insurance.

§ 11.0.5 All insurance required herein shall, by endorsement, be primary insurance with respect to the Owner, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.0.6 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, representatives or agents.

§ 11.0.7 All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor.

§ 11.0.8 Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.0.9 In the event that the insurers issuing the policies required under this Article 11 deny coverage to Owner, the Contractor or subcontractor will, upon demand by Owner, defend and indemnify the Owner at the Contractor's or Subcontractor's sole expense.

§ 11.0.10 The Contractor shall require subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of Work by the subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the Work, be deemed a waiver by Owner of Contractor's or the subcontractor's insurance obligations set forth herein.

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect them and the Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (see Sections 11.1.2.1 and 11.1.5);
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;

- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18; and
- .9 Claims for damages to the Work itself, through builder's risk insurance.

§ 11.1.1.9 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- a. Premises Operations (including X, C and U coverages as applicable).
- b. Independent Contractors' Protective.
- c. Products and Completed Operations.
- d. Personal Injury Liability with Employment Exclusion deleted.
- e. Contractual, including specified provision for Contractor's obligation under 3.18.
- f. Owned, non-owned and hired motor vehicles.
- g. Broad Form Property Damage including Completed Operations.

§ 11.1.1.10 The Contractor shall provide such General Liability Insurance by a Commercial General Liability Policy on an occurrence policy. The Contractor shall maintain this policy from the date of Commencement until one year after the date of final payment.

Commercial General Liability (Occurrence Basis) must:

- (i) be on ISO form CG 00 01 12 04, or equivalent;
- (ii) not modify the separation of insured language;
- (iii) designate Construction Project(s) General Aggregate Limits (ISO CG 25 03 97), or equivalent;
- (iv) delete the contractual liability exclusion with respect to personal injury; and
- (v) state that the defense of any claim and all claim or suit expenses will be provided as an additional benefit and will not be included within the limit of liability.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified below or required by law, whichever coverage is greater. Coverages, on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The stipulated limits of liability aggregate coverages shall be for this Project. The following limits are required:

- .1 Commercial General Liability including Premises Operations, Independent Contractors' Protective, Products and Completed Operations, Broad Form Property Damage, Contractual Insurance, and Personal Injury with coverage not less than the following:
  - (a) General Aggregate: \$2,000,000.00 and it shall apply, in total, to this Project only.
  - (b) Products and Complete Operations Aggregate: \$2,000,000.00 to be maintained for two years after final payment.
  - (c) Personal and Advertising Injury, with Employment Exclusion Deleted: \$1,000,000.00
  - (d) Each Occurrence: \$1,000,000.00
  - (e) Fire Damage (any one fire): \$50,000.00
- .1.1 Contractual Liability:
  - 1. Property Damage shall be included in Commercial General Liability Coverage.
  - 2. Insurance sufficient to cover Contractor's contractual indemnities.
- .2 Business Auto Liability (including owned, non-owned, hired, or any other vehicles) with limits not less than the following:
  - (a) Bodily injury and property damage with combined single limit of \$1,000,000.00.
- .3 Umbrella Excess Liability:



(a) \$2,000,000.00 over primary insurance and List Owner as additional insured.

**4 All Risk Builders Risk Insurance:**

If Contractor is a Construction Manager at Risk, then, as specified in each Guaranteed Maximum Price Amendment, in a total amount equal to the Guaranteed Maximum Price; otherwise, in the total amount of the Contract Sum. See Section 11.3.

**§ 11.1.3** Certificates of insurance with all required endorsements attached acceptable to the Owner shall be filed with the Architect and Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate, policy, and endorsement 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 to the Owner and Architect within five days of Contractor's first notice of the same. The Contractor shall also provide to the Owner prior to commencing the Work full copies of all insurance policies and endorsements required by the Contract Documents. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required herein. The Contractor shall provide such written notice within five business days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

*(Paragraphs deleted)*

**§ 11.1.5 General Requirements**

**(a) Policies.** All policies must:

- (i) Be issued by carriers having a Best's Rating of A or better, and a Best's Financial Size Category of Class VIII, or better, and/or *Standard & Poor Insurance Solvency Review* of A- or better, and admitted to engage in the business of insurance in the State in which the Project is located;
- (ii) Be endorsed to be primary with the policies of all Owner being excess, secondary and noncontributing;
- (iii) Issued on an "occurrence based" policy;
- (iv) With respect to all liability policies except workers' compensation/employer's liability, be endorsed to include the Owner as "additional insured"; and
- (v) Contain a provision for 30 days' prior written notice by insurance carrier to Owner required for cancellation, nonrenewal, or substantial modification.

**(b) Limits, Deductibles and Retentions**

- (i) Except as expressly provided above, no deductible or self-insured retention in excess of \$25,000 without prior written approval of Owner.
- (ii) No policy may include an endorsement restricting, limiting, or excluding coverage in any manner without the prior written approval of Owner.

**(c) Forms**

- (i) If the forms of policies, endorsements certificates, or evidence of insurance required by Article 11 of this Agreement are superseded or discontinued, Owner will have the right to require other equivalent forms; and
- (ii) Any policy or endorsement form other than a form specified in Article 11 of this Agreement must be approved in advance and in writing by Owner.

**(d) Evidence of Insurance.** Insurance must be evidenced as follows:

- (i) Copies of the required insurance policies, declaration, and endorsements themselves;

- (ii) ACORD Form 25 *Certificates of Liability Insurance* for liability coverages;
- (iii) ACORD Form 28 *Evidence of Property Insurance* for property coverages;
- (iv) Evidence to be delivered to Owner prior to commencing Work on the Project and at least thirty (30) days prior to the expiration of current policies; and
- (v) ACORD forms must:
  - a. Show the Owner as Certificate holders (with Owner's mailing address);
  - b. Show Contractors as the "Named Insured";
  - c. Show the insurance companies producing each coverage and the policy number and the policy date of each coverage;
  - d. Name the producer of the certificate (with correct address and telephone number) and have the signature of the authorized representative of the producer;
  - e. Specify the additional insured status (on a separate ACORD Form 45);
  - f. State the amounts of all deductibles and self-insured retentions;
  - g. Show the primary status and aggregate limit per project where required;
  - h. Be accompanied by copies of all required additional insured endorsements; and
  - i. The phrases "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents, or representatives" must be deleted from the cancellation provision of the ACORD 25 certificate and the following express provision added: "This is to certify that the policies of insurance described herein have been issued to the Insured for whom this certificate is executed and are in force at this time. In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, 30 days' prior written notice will be given to the certificate holder by certified mail or registered mail, return receipt requested."

**(e) Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### § 11.1.5.1 ADDITIONAL INSURED STATUS AND CERTIFICATES OF INSURANCE

The provisions of this Section 11.1.5.1 are in addition to any other requirements of the Contractor under this Agreement, and do not reduce or otherwise limit any of Contractor's duties.

Owner, along with their respective officers, agents and employees, shall be named on the Commercial General Liability Insurance as Additional Insured (CG 20 10 04 13) for Ongoing Operations and Product's/Completed Operations (CG 20 37 04 13) on the Contractor's and any Subcontractor's Commercial General Liability policy, to the extent that it is permitted by law. This insurance must be primary and noncontributory with respect to the Additional Insureds. This insurance shall remain in effect as set forth below, in the "Continuation of Coverage" provision. Furthermore, Owner, along with their respective officers, agents and employees, shall be named as an Additional Insured to the Contractor's and any Subcontractor's Commercial Auto Liability Policies, to the extent that it is permitted by the law.

It is expressly understood by the parties to this Contract that it is the intent of the parties that any insurance obtained by Owner is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Contractor, the Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or any directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile, Workers' Compensation and Excess Liability policies in favor of Owner, and this clause shall apply to the Owner's officers, agents and employees, with respect to all projects during the policy term.



Prior to commencement of Work, Contractor shall submit a Certificate of Insurance to Owner and the aforementioned Additional Insured Endorsements as required by this contract. The Certificate shall be in a form approved for use in the state in which the Work is to take place. Copies of insurance policies shall promptly be made available to Owner upon request. Contractor or Subcontractor's Insurance Broker shall endeavor to notify Owner of any change in policy or Notice of Cancellation at least 30 days prior to such change or notice taking effect.

The policies required hereunder shall not contain any exclusion or other provision that would deny coverage for a claim made by Owner due to Owner's status as an additional insured.

## **CANCELLATION, RENEWAL AND MODIFICATION**

The Contractor shall maintain in effect all insurance coverages required under this Agreement at the Contractor's sole expense and with insurance companies acceptable to Owner until final completion and acceptance of the entirety of the Contract Work; or longer if so provided in the Agreement such as with respect to completed operations coverage. Certificates of Insurance showing required coverage to be in force must be delivered to Owner prior to commencement of the Contract Work. In the event the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, this shall be considered a material breach of the contract, entitling Owner, at its sole discretion, to purchase such equivalent coverage as desired for Owner's benefit and charge the expense to the Contractor, or, in the alternative, exercise all remedies otherwise provided in the contract, or as permitted by law or equity.

## **CONTINUATION OF COVERAGE**

The Contractor shall continue to carry Completed Operations Liability Insurance for at least ten (10) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is later. The Contractor shall furnish Owner evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

### **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1 BUILDER'S RISK INSURANCE** Contractor shall obtain, at its expense, a builder's risk "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the initial Contract Sum (or, if the Project is a Construction Manager at Risk project, Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, flood, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsehood, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Contractor, Subcontractors, and Sub-subcontractors and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Contractor shall be responsible for maintaining said builder's risk insurance until the date of Final Completion. If this policy excludes Employee Theft or Dishonesty coverage, including Third Parties, Contractor shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner.

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.2** For any claim made against the builder's risk insurance, the deductible shall not exceed \$2,500 for a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of less than \$4 million. For a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of \$4 million or more, the deductible shall not exceed \$5,000.

**§ 11.3.5** Partial occupancy or use shall not commence until the insurance company providing this insurance has consented in writing, by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain such consent and shall take no action without written mutual consent that would cause cancellation, lapse, or reduction of this insurance.

## § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall procure and maintain all bonds required for the Work by law or the Contract Documents. Each bond must be in a total amount equal to 100% of the Contract Sum, or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project, whichever is applicable. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. Except as provided below, such bond shall be furnished to Owner before any work begins and not later than five business days after execution of the Contract by Owner. (If the Guaranteed Maximum Price is not known at the time that a Construction Manager at Risk contract is awarded, then the sum of the payment and performance bonds must each be in an amount equal to the Project budget. The Construction Manager at Risk shall deliver the bonds not later than the tenth day after the date the Construction Manager at Risk executes the Contract, unless the Construction Manager at Risk furnished a bid bond or other financial security acceptable to the Owner to ensure that the Construction Manager will furnish the required payment and performance bonds when the Guaranteed Maximum Price is established.) All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2253, or their successors. The surety company shall have a rating of not less than "A-X" according to the latest posted ratings on the A.M. Best website, [www.ambest.com](http://www.ambest.com). The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then 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 amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 The Contractor shall deliver copies of the required bonds to the Owner and Architect not later than five business days after execution of the Contract by Owner. All bonds will be reviewed by the Architect for compliance with the Contract Documents. 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 with Architect's recommendation.

§ 11.4.4 All bonds shall be originals. The Contractor 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.

*(Paragraphs deleted)*

## § 11.6 WORKERS' COMPENSATION INSURANCE

A copy of a certificate of insurance 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 is required for the duration of the Project.

Duration of the Project includes the time from the beginning of the Work on the Project until the Contractor's/person's Work on the Project has been completed and accepted by the governmental entity.

Persons providing services on the Project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor 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 that 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 do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The Contractor 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 401.011(44) for all employees of the Contractor providing services on the Project for the duration of the Project.

The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor 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.

The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. 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
2. No later than seven days after receipt by the Contractor, 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.

The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

The Contractor 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.

The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. 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 401.011(44) for all of its employees providing services on the project for the duration of the project;
2. Provide to the Contractor, 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;
3. Provide the Contractor, 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;
4. Obtain from each other person with whom it contracts, and provide to the Contractor:
  - a. A certificate of coverage, prior to the other person beginning Work on the Project; and
  - b. 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;
5. Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
6. Notify the governmental entity in writing by certified mail or personal delivery, within ten (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

7. Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor 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. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i).

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the costs of such uncovering and replacement shall be at Owner's expense. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 12.2.1.2** The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

#### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.



§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall 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 the Construction Documents or the Contract Documents or by defects in the Work.

§ 12.2.7 **The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor.**

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. Exclusive venue for any action arising out of the Project or the Contract Documents is in the state courts of the county in which the Owner's administrative offices are located.

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 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 Contractor shall coordinate with Architect and Owner to make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity selected by the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the requirements of the law.

§ 13.7 Any right to recovery of attorney fees available under Texas Local Government Code Chapter 271, Subchapter I, is hereby waived.

### § 13.9 RECORDS

§ 13.9.1 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at



least twelve (12) years after the date of Final Completion of the Project. Within 10 days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

**§ 13.9.2** If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

**§ 13.9.3** Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.9.1.

**§ 13.9.4** Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

**§ 13.9.5** In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment of undisputed sums on a Certificate for Payment within the time stated in the Contract Documents.

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

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, and no other amount.

**§ 14.1.4** If the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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 Contractor may, upon twenty additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

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- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in worker misconduct in violation of Article 3.3.2 or engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.5. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Time shall be adjusted for increases in the time caused by suspension, delay, or interruption under Section 14.3.1. No adjustment shall be made to the extent:

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an adjustment is made or denied under another provision of the Contract.

#### **§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed and no other amount.

**§ 14.4.4** Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

##### **§ 15.1.1 Definition**

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, interpretation of any contractual responsibility, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the Contractor. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. Contractor's failure to file a timely and proper claim as described in this Article 15 constitutes a waiver of Contractor's right to make any claim or argument regarding that subject matter and a failure to follow contractual adjudication procedures necessary to maintain its right to seek any judicial relief against Owner. The requirements of this Section 15.1 (and all of its subparts) shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

*(Paragraphs deleted)*

##### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by the Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims under this Section 15.1.3.1 shall be initiated within 90 days after occurrence of the event giving rise to such Claim or within 90 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by the Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the Owner. In such event, no decision by the Initial Decision Maker is required. Claims under this Section 15.1.3.2 shall be initiated within 90 days after occurrence of the event giving rise to such Claim or within 90 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.3** All Claims by Contractor must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint,

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and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety (90) days after the occurrence of the event giving rise to such claim or within ninety (90) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, is waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 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 Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were: (1) "Unusually Severe" for the period of time, (2) could not have been reasonably anticipated, (3) were beyond the control and without the fault or negligence of the Contractor, and (4) had an adverse effect on critical path activities for more than 50% of the scheduled work day.

"Unusually Severe" weather is defined as weather that exceeds the weather conditions usually encountered at the Project site during the month involved, and is determined by calculating the amount to which the actual weather encountered at the Project site exceeds the average of the relevant weather data for the Project site for the previous 10 years, as collected by the National Oceanic and Atmospheric Administration (NOAA). Only weather delays that (1) exceed the greater of: (A) the 10-year NOAA average for the project site during the relevant month, or (B) the anticipated weather days identified in the Specifications (if any), and (2) meet all other criteria listed above may be compensable by an increase in Contract Time.

*(Paragraphs deleted)*

#### **§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes, but is not limited to, damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. Contractor also waives all claims for increased cost to perform the Work as a direct result of Owner-caused delays or acceleration.

This waiver is applicable, without limitation, to all such damages due to Owner's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be referred to the Initial Decision Maker for initial

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decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Contract. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation or litigation of any Claim.

§ 15.2.2 The Initial Decision Maker will review Claims and within 30 days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision is subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation. Nothing in this agreement is intended to waive any of Owner's immunity from suit or liability.

### § 15.3. Contractual Adjudication Procedure for all Claims and Disputes

- .1 The requirements of this Section 15.3 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.
- .2 **Pre-Litigation Grievance and Mediation.** Any claim, dispute or other matter in question that Contractor has against Owner shall be subject to full exhaustion of the grievance procedure found in Owner's GF (LOCAL) policy and non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by Contractor. In the case of any such claim, dispute, or other matter, by the Contractor against the Owner, including, but not limited to, any claim that the Owner has breached a contract, the Contractor may not file a lawsuit or demand mediation until the complaint procedure found in Owner's GF (LOCAL) policy has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit A-1. The Contractor's failure to timely file a grievance under policy GF (LOCAL), meet any requirement of this Article 15, or otherwise fully exhaust policy GF (LOCAL) in accordance with the policy's requirements is a failure to adhere to contractual adjudication procedures, a failure to exhaust remedies, a failure to fulfill conditions precedent, constitutes waiver, and is a bar to suit against the Owner.

- a. The timelines under Policy GF (LOCAL) are amended for purposes of this Agreement as follows: Contractor's complaint must be reduced to writing and filed within ninety (90) calendar days of the date the Contractor first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint. If the Contractor fails to meet this timeline, the Contractor will have failed to exhaust this remedy, will have failed to adhere to this contractual adjudication procedure, will have failed to fulfill conditions precedent to suit, will have waived the complaint, and will be barred from suing the Owner.
- b. Contractor agrees that, in order to fully exhaust its remedies under policy GF (LOCAL) and otherwise comply with this Section 15.3, Contractor must identify and articulate in writing the specific factual and legal basis for its claims. Any basis that is not identified and articulated by the Contractor as part of its complaint under GF (LOCAL) is waived by the Contractor and may not be asserted in any subsequent proceeding against the Owner.
- c. The following are each an independent condition precedent to the institution of civil proceedings by the Contractor against the Owner concerning the contested matter: 1) full exhaustion of claims through Owner's GF (LOCAL) policy as described herein, 2) full exhaustion of the Claims process referenced in the Agreement and the applicable A201, 3) a written demand by the Contractor for mediation, and 4) good faith and full participation in the mediation process.
- d. Following the full exhaustion of claims through Owner's GF (LOCAL) procedure, and upon receipt by Owner of Contractor's written demand for mediation, Owner may, at its option, either proceed with non-binding mediation of the dispute, or provide written notice to Contractor of Owner's decision to waive its right to compel such mediation. Owner's voluntary participation in any mediation or any other settlement discussions shall not be construed as a waiver of any failure by Contractor to exhaust remedies, follow contractual adjudication procedures, or otherwise comply with the Contract Documents. If the parties participate in mediation, the parties shall share the mediator's fee and any filing fees equally.

## ARTICLE 16 MISCELLANEOUS

§ 16.1 Contractor agrees to waive any claim it has or may have against the Owner, the Architect, and their respective employees and officers, arising out of or in connection with the administration, evaluation, or recommendation of any bid; waiver of any requirements under the Bid Documents; or the Contract Documents; acceptance or rejection of any bids; and award of the Contract.

§ 16.3 The Contractor shall not execute a contract with any Subcontractor that contains an agreement or provision to arbitrate claims. In the event that a Subcontractor seeks to arbitrate a claim arising out of or relating to the Contract Document or this Project, Contractor shall not seek to join in such or any other arbitration proceeding relating to this Project.

§ 16.4 In the event that this modified AIA A201-2017 is not signed by the Architect, the absence of the Architect's signature does not affect the validity of this document as between Owner and Contractor for this Project, and shall not be interpreted as an indication that this modified AIA A201-2017 is not effective.



**OWNER**

**CONTRACTOR**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

The Architect acknowledges that this modified AIA A201-2017 is the A201 that is applicable to the Project.

**ARCHITECT**

\_\_\_\_\_  
*(Signature)*

*(Paragraphs deleted)*

\_\_\_\_\_  
*(Printed name and title)*

# Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:28:28 CT on 11/21/2022.

## PAGE 1

### NOT FOR EXECUTION – FOR PROCUREMENT PURPOSES ONLY

...

Carthage Independent School District  
#1 Bulldog Drive  
Carthage, Texas 75633

## PAGE 2

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### **Arbitration**

8.3.1, 15.3.2, 15.4

## PAGE 9

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the executed Agreement, this modified AIA Document A201—2017, General Conditions of the Contract (~~General, Supplementary and other Conditions~~), for Construction, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

This AIA Document A201-2017, General Conditions of the Contract of Construction, as modified, shall be the General Conditions for the Project and supersedes any prior general conditions and/or supplemental conditions for the Project.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. This section does not in any way limit the Architect's or the Contractor's duties to the Owner under their respective agreements with the Owner.

...

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. ~~The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~

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§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence:

1. The Agreement
2. This amended A201-2017 General Conditions of the Contract for Construction
3. Addenda, with the most recent Addenda taking precedence over earlier Addenda
4. Specifications
5. Drawings

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined by a court of competent jurisdiction in an action to construe the Contract Documents that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised by the court to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

...

§ 1.2.4 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the Cost of the Work the greater quantity or better quality, or the most stringent requirements. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of the Owner. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed ~~and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.~~ by means of in-person delivery or certified mail. Where one party attempts to provide notice by means of certified mail, but the notice is returned by the US Postal Service, the party may serve notice via first class mail.

...

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will ~~use negotiate the terms of and execute an agreed version of~~ AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### **§ 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 to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, 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.~~

...

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner ~~shall~~may designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. It is expressly acknowledged that Owner is a governmental entity, and as such, only its Board of Trustees, acting as a body corporate, may take any action that would bind the Owner.

~~§ 2.1.2~~ The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

## **§ 2.2 Evidence of the Owner's Financial Arrangements**

~~§ 2.2.1~~ Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

~~§ 2.2.2~~ Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

~~§ 2.2.3~~ After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

~~§ 2.2.4~~ Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

**§ 2.1.3** The parties acknowledge that no lien rights exist with respect to public property and agree that no lien may be filed related to the Project.

**§ 2.1.5** The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications and other Contract Documents, and has no duty to notify Contractor of same. By entering into the Contract Documents or any Agreement with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Contract Documents.

...

§ 2.3.2 The Owner ~~shall~~may retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 ~~If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~

§ 2.3.4 ~~The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall~~If requested in writing by the Contractor prior to the start of the Work, the Owner shall furnish surveys known to the Owner. Other than metes and bounds noted in the legal description of the site, the Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines, or the presence or absence of easements.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. ~~The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.~~

§ 2.3.6 Unless otherwise provided in the Contract Documents, the ~~Owner~~Owner, upon written request, shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

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If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by ~~Section 12.2 or Section 12.2, fails to correct defective work,~~ repeatedly fails to carry out Work in accordance with the Contract Documents, fails to complete the Work on time, or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or ~~entity,~~ entity, except to the extent required by Section 6.1.3. This right shall be in addition to, and not in restriction of, the Owner's rights under Section 12.2.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. The Architect shall also prepare and execute a Construction Change Directive reflecting the change in the Work and the adjustment of the Contract Sum and Contract Time, if any. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor ~~may~~must file a Claim pursuant to Article 15. If Contractor fails to file a Claim pursuant to Article 15, it waives any argument or claim regarding this issue.

...

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner conducted in accordance with the Contract Documents, the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.



§ 3.1.4 The Contractor 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 tools, materials, supplies, equipment and labor required to timely 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, public, and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
- .4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

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§ 3.2.2.1 By executing the Agreement, the Contractor represents and warrants to the Owner and the Architect that it has carefully examined the plans, Construction Documents, specifications, and the site of the Work, and that from its own investigations, it has been satisfied as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or matters that may in any way affect the Work or its performance. No allowance on the Contractor's behalf will be made by the Owner for any error or negligence by the Contractor failing to visit the site or failing to thoroughly study and compare all of the Construction Documents prior to submitting a proposal or bid. Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied.

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor his warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for his position. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. ~~If the Contractor performs those obligations, the~~ The Contractor 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, except when the Contractor recognized, or reasonably should have recognized, such error, inconsistency, omission or difference and failed to report it to the Architect

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor 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. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to the lines, cables, pipes, and pipelines identified to Contractor.

§ 3.2.6 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such



break shall be attributable to Contractor. In addition, and only if applicable, Contractor shall review the appropriate AHERA and hazardous materials surveys for the particular campuses involved in the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. If applicable, Contractor shall comply with U.S. Environmental Protection Agency rules concerning renovating, repairing or painting work in schools built prior to 1978 involving lead-based paint.

**§ 3.2.7** The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above requirements of the Contract Documents and this causes the Architect or his Consultants to expend an unreasonable amount of time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. This section does not create any duty on the Owner to pay any amount to the Architect.

**§ 3.2.8** The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Construction and Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including:

- .1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;
- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

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**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. ~~Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.~~

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol free, drug free, and weapon free policies and zones, which will require compliance with these policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall also require adequate and appropriate dress of Contractor's employees, Subcontractors, and all other persons carrying out the Contract.

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§ 3.3.4 The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all Sub-contractors and Sub-sub-contractors.

§ 3.3.5 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Contractor shall fully comply, and shall require any applicable Subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
- .2 The special shoring requirements, if any, of the Owner;
- .3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system; and
- .4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 3.3.7 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Contractor the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor.

§ 3.4.1.1 It is required that the Contractor and Subcontractors on the Project pay not less than the prevailing wage rates adopted by Owner pursuant to Texas Government Code Chapter 2258 for wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them. The wage rates adopted by Owner under Chapter 2258 are specified in Exhibit B of the Agreement. Any workers not included in the adopted schedule shall be properly classified and paid no less than the rate of prevailing wages in the locality of the Work at the time of construction. Owner shall be paid by Contractor \$60.00 per violation, per day or part of a day, that a worker is paid less than the adopted prevailing wages.

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§ 3.4.2.1 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 Contractor; (iii) and when, in the judgment of the Owner, in consultation with the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittals 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 for the substitution; (ii) a written explanation of the reasons the substitution should be considered, 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; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating

(a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than fifteen (15) working days for review. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information.

§ 3.4.2.3 Whether or not the Owner or the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 3.4.4 The Contractor shall not allow any person who has been convicted of a felony or sex offense to carry out any portion of the Work or to be present on Owner's property.

§ 3.4.5 Pursuant to Texas Education Code Section 44.034, Contractor must give advance written notice to the Owner if the Contractor or an owner or operator of the Contractor has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Contractor failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

§ 3.4.7 In addition to other requirements, Contractor will at least annually obtain criminal history record information that relates to any employee, agent, or subcontractor of the Contractor or a Subcontractor, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location where students are likely to be present. Contractor shall assume all expenses associated with the background checks and shall immediately remove any employee, agent or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present."

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient ~~maintenance~~, maintenance (unless such maintenance is the Contractor's responsibility), improper operation, or normal wear and tear and normal ~~usage~~, usage, but such exclusions shall only apply after Owner has taken occupancy of the damaged or defective part of the Project. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor's express warranties are in addition to, and not in lieu of, Owner's other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect by the Contractor on the manufacturer's or supplier's approved forms for delivery to the Owner. The warranties set out in this subparagraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.Owner.

§ 3.5.3 In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of defective Work or replacement of the defective items, without cost to the Owner. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy defects as covered by Contractor's

warranty. If Contractor does not respond to the written notice, either by beginning corrective work or notifying Owner in writing regarding when corrective work will begin, within ten (10) days of Contractor's receipt of the written notice, then the Owner may take measures to correct the Work and Contractor will be obligated to reimburse Owner's costs. The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

§ 3.5.4 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of:

- .1 an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or
- .2 an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or
- .3 such further reasonable proof as is required by the Architect.

§ 3.5.5 The Contractor agrees to assign to the Owner at Final Completion of the Work, such assignment to be effective no later than Final Completion, any and all manufacturers' warranties relating to materials and labor used in the Work. Contractor further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties. All forms will be required to be submitted prior to Final Payment.

§ 3.5.6 The warranties of Contractor provided herein shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

§ 3.5.7 Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the requirements under Section 12.2.2.1 herein on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner and Architect. Prior to termination of the period under Section 12.2.2.1 herein, Contractor shall accompany Owner and Architect on re-inspection of each Work in the Project and Contractor shall be responsible for correcting any items which are observed or reported during the period under Section 12.2.2.1 herein. Contractor shall prosecute such Work under Section 12.2.2.1 herein without interruption until accepted by Owner and Architect, even though such Work should extend beyond the period under Section 12.2.2.1 herein. If Contractor fails to provide the schedules to Owner and Architect, Contractor's obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.

§ 3.5.8 Without limitation to any other duties of the Contractor, Contractor is not entitled to Final Payment until it does the following:

- .1 Obtain duplicate original warranties, executed by all Subcontractors, making the dates of beginning of the warranties the Date of Final Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties no later than the Date of Final Completion;
- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required;
- .4 Bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers;



- .5 Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;
- .6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified;
- .7 Separate each warranty with index tab sheets keyed to the Table of Contents listing; and
- .8 Deliver warranties and bonds in the form described above, to the Architect who will review same prior to submission to the Owner.

~~The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Owner is an exempt entity under the tax laws of the State of Texas. Texas Tax Code § 151.309; 34 TAC § 3.322. Contractor shall fulfill the requirements of the Texas Tax Code § 151.309, § 151.310, § 151.311 and 34 TAC § 3.291; 3.287. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept a Certificate of Exemption from the Owner, pursuant to Texas Tax Code § 151.054(e); § 151.155; and 34 TAC § 3.287. Contractor shall obtain Certificates of Resale from Contractor's suppliers. Texas Tax Code § 151.154, 34 TAC § 3.285. Failure of Contractor or any Sub-contractor to obtain Certificates of Resale from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.~~

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~~§ 3.7.3 If the Contractor performs Work knowing when it knows or reasonably should know it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.~~

...

~~If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (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 Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 three days after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party the Contractor disputes the Architect's determination or recommendation, that party may the Contractor must submit a Claim as provided in Article 15-15, or else the Contractor waives any claim related to this issue.~~

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~~§ 3.7.6 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Contractor shall inform the Architect at once when the Owner's participation is required, and the Architect shall immediately notify the Owner. Connections for temporary and permanent utilities and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed in~~

writing. If the Work is new construction, then payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion.

...

- 3 whenever costs are ~~more than~~ or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

...

§ 3.8.4 When performing Work under allowances, Contractor shall solicit and receive not less than three written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the Owner.

...

Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Paragraph 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion.

~~§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's ~~consent~~, which shall not unreasonably be withheld or delayed. Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Paragraph 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion.

§ 3.9.4 Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under general conditions for such day.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Owner or Architect's failure to object to Contractor's submitted schedule does not absolve Contractor of any duties.



...

**§ 3.10.4** The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the Project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date.

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form ~~or~~ and paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a ~~Subcontractor, Sub-subcontractor,~~ subcontractor, sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

...

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Contract Documents remain the Contractor's responsibility.

...

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued specifically authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

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**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall ~~be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents.~~ The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and

other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

...

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

...

**§ 3.14.3** No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only be performed by those skilled in performing the original Work.

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. The Contractor shall clean up at least weekly, or more often as needed to maintain a safe work site, or as otherwise directed by the Owner. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

...

**§ 3.15.4** After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

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The Contractor shall pay all royalties and license fees. ~~The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if~~ THE CONTRACTOR WAIVES AND RELEASES CLAIMS AGAINST THE OWNER AND ARCHITECT, AND SHALL DEFEND AND INDEMNIFY OWNER AND ARCHITECT FROM SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, AND SHALL HOLD HARMLESS THE OWNER AND ARCHITECT FROM LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, CONTRACTOR, SHALL NOT BE

RESPONSIBLE TO ARCHITECT FOR SUCH DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS OR OTHER DOCUMENTS PREPARED BY THE ARCHITECT AND SHALL NOT BE RESPONSIBLE TO OWNER IF OWNER REQUIRES A PARTICULAR DESIGN, PROCESS OR PRODUCT THAT CONSTITUTES A COPYRIGHT VIOLATION. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **§ 3.18 Indemnification INDEMNIFICATION**

~~§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~ **TO THE FULLEST EXTENT PERMITTED BY LAW THE CONTRACTOR WAIVES AND RELEASES CLAIMS AGAINST, AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF) INCLUDING, BUT NOT LIMITED TO, LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, OR ANY OTHER PARTY OR ENTITY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY A JUDGMENT DEBTOR UNDER THE LAWS OF THE STATE OF TEXAS.**

**§ 3.18.1.1 IN ADDITION TO THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AND AGENTS AND EMPLOYEES OF ANY OF THEM (THE "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF OWNER AND CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE,**

**WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR OWNER UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.**

**§ 3.18.2** In claims against any person or entity indemnified under this ~~Section 3.18~~ Section 3.18 by an employee of the Contractor, a ~~Subcontractor, subcontractor,~~ anyone directly or indirectly employed by ~~them, them~~ or anyone for whose acts they may be liable, the indemnification obligation under ~~Section 3.18.1~~ Section 3.18.1 shall not be limited by a limitation on amount or type of damages, ~~compensation, compensation~~ or benefits payable by or for the Contractor or a ~~Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~ ~~Subcontractor under insurance policies, workers' compensation acts, disability benefit acts or other employee benefit acts.~~

**§ 3.18.3** The obligations of the Contractor under this Section 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them, caused by or resulting from: (1) defects in plans, designs, or specifications prepared, approved, or used by the Architect or engineer; or (2) negligence of the Architect or engineer in the rendition or conduct of professional duties called for or arising out of the construction contract and the plans, designs, or specifications that are a part of the construction contract; and (3) arising from: (a) personal injury or death; (b) property damage; or (c) any other expense that arises from personal injury, death, or property damage, or as otherwise limited by Texas Civil Practice & Remedies Code Section 130.001 *et seq.*

**§ 3.18.4** Contractor agrees to indemnify and to hold the owner's other contractors harmless from all claims for bodily injury and property damage to the same extent as provided in Section 3.18.1 above.

**§ 3.18.5** The provisions of Section 3.18 in its entirety shall survive the completion, termination or expiration of this contract.

**§ 3.18.6** It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect. It is understood and agreed that Subparagraph 3.18.1 above is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

**§ 3.19 ANTITRUST VIOLATION.** To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 *et seq.* The Contractor shall include this provision in its agreements with each Subcontractor and supplier. Each Subcontractor shall include such provisions in agreements with Sub-subcontractors and suppliers.

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**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Contractor agrees that Owner is not responsible for any fault or failure of the Architect and hereby waives any claims against Owner arising from any fault or failure of the Architect. The Contractor further acknowledges that the Architect is not the agent of the Owner and that the Architect has no authority to bind the Owner.

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**§ 4.1.3** The Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Contract Documents by the duties, responsibilities, or activities of the Architect.

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will Documents. The Architect will not have authority to act on behalf of the Owner only to the extent



~~provided in the Contract Documents of the Owner, unless Owner's Board of Trustees has formally authorized the Architect to act on behalf of the Owner.~~

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. ~~However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.~~

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, ~~Subcontractors, subcontractors,~~ or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect, if any, for additional site visits made necessary by the fault, neglect, or request of the Contractor.

...

The Owner and Contractor shall ~~include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities.~~ endeavor to communicate with each other through the Architect. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with ~~Subcontractors~~ subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

...

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. The Architect shall report in writing to the Owner known deviations from the Contract Documents and any known non-conforming Work. Architect shall reject non-conforming Work. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. Performance of any additional inspection or testing which would result in additional cost to the Owner shall require advance notice to and approval of the Owner. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, ~~Subcontractors, subcontractors,~~ suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. ~~The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.~~

...

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~

§ 4.2.13 The Architect's-Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

...

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. ~~Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Contractor shall procure all subcontracts in accordance with Texas Education Code Chapter 44, Subchapter B, and Texas Government Code Chapter 2269, as applicable. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.~~

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable ~~and timely~~ objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall~~ When the parties agree on a proposed substitute Subcontractor then, the Contract Sum and Contract Time may, by mutual written agreement, be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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**§ 5.3.1 SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER, ITS ARCHITECTS AND/OR ENGINEERS, CONTRACTOR, ITS SUBSIDIARIES, THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS FOR WHICH SUBCONTRACTOR IS RESPONSIBLE INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CLAIMS FOR WHICH THE SUBCONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER MAY BE CLAIMED TO BE LIABLE AND LEGAL FEES AND DISBURSEMENTS PAID OR INCURRED TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH FOR WORK TO BE PERFORMED UNDER THIS SUBCONTRACT. IT IS EXPRESSLY UNDERSTOOD THAT THE RIGHTS ARTICULATED IN THIS ARTICLE ARE NOT LIMITATIONS ON ANY OTHER RIGHT CONTAINED IN THIS AGREEMENT OR AT COMMON LAW. THIS SECTION SHALL BE INTERPRETED TO APPLY TO THE FULLEST EXTENT ALLOWED BY LAW.**

§ 5.3.2 Contractor understands and agrees that the language included in § 5.3.1 above is in addition to the rights and responsibilities of the Contractor under the Contract Documents, and nothing contained in the above language shall be construed to limit, reduce or abridge the Contractor's liability arising from or in connection with any property damage, bodily injury, or any other cause of action related to this Project for which Contractor may be held liable, and that this language does not limit, reduce, or abridge Contractor's duty to defend and indemnify Owner in accordance with § 3.18 of this Agreement.

...

.2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract.

~~When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.~~



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

~~§ 5.4.3~~ Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

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~~§ 6.1.1~~ The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation, forces and with Separate Contractors.

...

~~§ 6.1.4~~ Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### ~~§ 6.2 Mutual Contractor's Responsibility~~

~~§ 6.2.1~~ It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's Separate Contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

...

~~§ 6.2.3~~ The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. ~~The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.~~

~~§ 6.2.3.3~~ All costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Contract Documents, will be borne by the Contractor.

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~~§ 7.1.1~~ Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The parties stipulate that (1) the term "change order" as used in Texas Local Gov't Code 271.153(2) exclusively means a fully executed Change Order as defined herein, and (2) the phrase "additional work the contractor is directed to perform by a local governmental entity in connection with the contract" exclusively refers to additional work that is the subject of a fully executed Construction Change Directive as defined herein.

~~§ 7.1.2~~ A Change Order shall be based upon agreement among the ~~Owner, Owner~~ (based on the specific approval of each particular Change Order by the Owner's Board of Trustees), Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

...

§ 7.2.1 A Change Order is a written instrument prepared by the Architect AIA Document G701 (as it may be modified) prepared by the Architect or Owner and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

...

- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all claims, whether direct or indirect, arising from the subject matter of the Change Order.

§ 7.2.3 Pricing Change Order Work. The amounts that Contractor and/or its Subcontractor adds to a proposed Change Order for profit and overhead will be considered by Owner before approval is given. The amounts established hereinafter are the maximums that will be considered for proposed Change Orders.

§ 7.2.3.1 For Work performed by its forces, Contractor may propose its actual costs paid for materials, the total amount of its actual wages paid for labor, plus its actual cost paid for State and Federal payroll taxes and for workers' compensation and comprehensive general liability insurance, plus its actual additional bond and builder's risk insurance cost if the change directly results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to propose to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general Home Office expenses, and no separate allowance will be made therefor.

The maximum Contractor mark-up for overhead, profit or fee for Work performed by the Contractor's own forces shall not exceed 10% of the cost of the Change in the Work. The maximum Contractor mark-up for overhead, profit or fee for supervision of Work performed by subcontractors' forces shall not exceed 5% of the cost of the change in the Work. The maximum subcontractor mark-up for overhead, profit or fee for Work performed by the subcontractor's forces shall not exceed 10% of the cost of the Change in the Work. In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the Work, exceed 15% of the total cost of the Change in the Work.

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- .4 As provided in Section 7.3.4 at the Owner's election, either as provided in Section 7.3.4 or in 7.2.3 and 7.2.3.1 above.

...

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect; and workers' compensation insurance;

...

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor ~~may~~ must make a Claim in accordance with applicable provisions of Article 15-15 or else it waives any claim related to this issue. If a Construction Change Directive is issued pursuant to Section 2.5 and the Contractor disagrees with the adjustment in the Contract Sum or adjustment of the scope of the Work, Contractor shall make a Claim within ten (10) days of the date it receives notice of the Construction Change Directive. If the Contractor fails to make a Claim within ten (10) days of the date it receives notice of the Construction Change Directive, then the Contractor is deemed to have accepted the terms of the Construction Change Directive and the Construction Change Directive shall have the same force and effect as a Change Order.

...

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect~~ Architect plus an allowance for reduced overhead and profit. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net ~~increase, increase or decrease~~, if any, with respect to that change.

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§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the ~~adjustments, such agreement shall be effective immediately and~~ adjustments the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

...

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall ~~notify the Architect and shall not proceed to implement the change in the Work.~~ File a Claim under Article 15. If the Contractor performs the Work set forth in the Architect's order for a minor change without filing a Claim that provides prior notice to the Architect and Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

...

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion or the Date of Final Completion.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending ~~mediation and binding dispute resolution; mediation~~; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. Under no circumstances shall the Owner be required to pay the Contractor any compensation for such delays.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Contractor's failure to file such a Claim waives any claim or demand related to this issue.

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ Agreement does not permit the recovery of damages by the Contractor for any delay or disruption, including, but not limited to, delays due to bad weather or acts of God. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

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§ 9.1.1 The Contract Sum is stated in the Agreement and, ~~including authorized adjustments,~~ is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum may only be changed by a fully executed Change Order or Construction Change Directive. The portion of the Contract Sum that has been earned by the Contractor as provided herein but remains wrongfully unpaid by the Owner is the maximum amount that may ever be due and owing from Owner to Contractor under the Contract Documents.

~~§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.~~

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G702Cmc and G703 shall be used.

**§ 9.2.2** In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703, and shall include the following:

- .1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.
- .2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.
- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).
- .4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.
- .5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.
- .6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

...

**§ 9.3.1** At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Contractor must submit 24 photographs of the construction site that depict the Work subject to each Application for Payment. Without limiting any of Owner's rights under this Agreement, Owner's payment of any amount to Contractor does not constitute a waiver of any claims arising out of or related to the Work for which payment is being sought, whether or not any supporting data or materials included with the Application for Payment depicts or discloses any information that serves as the basis for those claims.

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**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment shall be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon ~~compliance by the Contractor with submission by the Contractor of bills of sale or such other procedures~~ satisfactory to the Owner to establish the Owner's title to such materials ~~and or~~ equipment or otherwise protect the Owner's interest, ~~and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site.~~ Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

**§ 9.3.4** Contractor shall submit Applications for Payment in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

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**§ 9.4.3** The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

...

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with ~~the Contract Documents.~~ the Contract Documents; or



.8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract time.

§ 9.5.2 When either party—the Contractor disputes the Architect’s decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may—the Contractor must submit a Claim in accordance with Article 15. Contractor’s failure to submit a Claim in accordance with Article 15 waives any claim or argument by Contractor related to this issue.

...

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as allowed by contract.

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§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided in the Contract Documents, by law, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor’s portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. In compliance with Texas Government Code Section 2251.022, the Contractor 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 Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide copies of such Subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor’s Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, then the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

...

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the – The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney’s fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor’s Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, litigation, then the Contractor may, upon seven additional days’ written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. However, in order to stop or suspend the Work, the Contractor must strictly comply with Chapter 2251 of the Texas Government Code in all respects, notwithstanding any other provision in the Contract Documents. The Contract Time shall be extended appropriately



~~and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents appropriately.~~

§ 9.7.3 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

- .1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or
- .2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's normal school operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work shall be completed within the greater of (1) 30 days, or (2) the Agreement's required deadline for final completion. Contractor shall complete Owner's Substantial Completion Certificate.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect shall supply a copy of this list to the Owner and will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

...

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

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§ 9.9.4 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds

the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Payment of retainage is not due until the Contractor achieves final completion of the entire Work and meets all conditions for final payment.

**§ 9.10.2** ~~Neither final payment nor any remaining retained percentage shall become due until the Contractor submits~~ As a condition precedent to the Owner's issuance of final payment and payment of any remaining retained percentage, Contractor must submit to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise ~~satisfied, (2) a certificate satisfied; (2) a~~ copy of the insurance policy evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect, effect; (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, Documents; (4) consent of surety, if any, to final payment, payment; (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, as well as signed warranties for all~~ products and services related to the Project; (6) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; (7) written certifications required by Section 10.5, 10.6, and 10.7; (8) final list of subcontractors (AIA Document G705); (9) Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at [https://tea.texas.gov/sites/default/files/cert\\_2004.pdf](https://tea.texas.gov/sites/default/files/cert_2004.pdf); (10) Maintenance and Instruction Manuals; (11) Owner's Final Completion Certificate; and (12) record drawings and "as built" drawings. At the completion of the Project, the Contractor shall submit one complete set of "as built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items. The Contractor shall submit these as electronic, sepi, or other acceptable medium, in the discretion of the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Final payment by Owner is conditioned upon fulfillment of all obligations set forth in this Section 9.10.2 and receipt of a Certificate for Payment from the Architect as set forth in Section 9.10.1.

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- ~~.3~~ terms of special warranties required by the Contract Documents; ~~or~~
- ~~.4~~ audits performed by the Owner, if permitted by the Contract Documents, after final ~~payment~~ payment;  
or
- ~~.5~~ claims then pending.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee ~~except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment~~ payee.

**§ 9.10.6** Owner shall deduct accrued liquidated damages from Final Payment to Contractor. The total accrual of liquidated damages shall be based on the dollar amounts established in the Agreement, date of Substantial Completion established in the Certificate of Substantial Completion, and the date of the Final Certificate for Payment.

...

- ~~.1~~ employees on the ~~Work~~ Work, school personnel, students, and other persons on Owner's premises, and other persons who may be affected ~~thereby;~~ thereby, including the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, ~~eustody, custody~~ or control of the ~~Contractor, a Subcontractor, or a Sub-subcontractor;~~ Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as ~~trees, shrubs, lawns, walks, pavements, roadways, structures, other buildings and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadways, structures~~ and utilities not designated for removal, ~~relocation, relocation~~ or replacement in the course of construction.

...

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable full protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel-personnel~~ and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 The Contractor shall promptly remedy damage and loss ~~(other than damage or loss insured under property insurance required by the Contract Documents)~~ to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor ~~may~~ must make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. Contractor's failure to make a Claim as required by this agreement waives any claim or argument by Contractor regarding this issue. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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§ 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 given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

...

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection.

When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended ~~appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up appropriately.~~

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~ IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SUBPARAGRAPH 3.18.

~~§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~ site.

~~§ 10.3.5 The Contractor shall reimburse the Owner be responsible for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.~~ Section 10.3.1. In the event that Owner incurs such costs and expenses, Contractor shall reimburse the Owner for such costs and expenses.

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~

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#### § 10.5 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

§ 10.5.1 Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

§ 10.5.2 Final Payment shall not be made until this written certification has been received.

#### § 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM

§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".



§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

#### **§ 10.7 HAZARDOUS MATERIALS CERTIFICATION**

§ 10.7 The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local 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 Contractor shall provide this written certification as part of submittals under the section in the Project Manual related to contract closeout.

§ 11.0.1 No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Compliance with this Article 11 by Contractor is a condition precedent to any payment from Owner to Contractor. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement.

§ 11.0.2 Satisfactory evidence of insurance required by this Article shall be provided to Owner and Architect not later than five business days after execution of the Contract by Owner. Satisfactory evidence shall include copies of all required insurance policies, declarations, and endorsements themselves. In addition, Contractor shall also provide a duly-executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations and additional endorsements, as they are provided to Contractor.

§ 11.0.3 All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, [www.ambest.com](http://www.ambest.com), and that permits waivers of subrogation.

§ 11.0.4 All insurance required herein shall name the Owner, its officers, employees, representatives or agents, as an additional insured, except Contractor's workers' compensation insurance.

§ 11.0.5 All insurance required herein shall, by endorsement, be primary insurance with respect to the Owner, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.0.6 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, representatives or agents.

§ 11.0.7 All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor.

§ 11.0.8 Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.0.9 In the event that the insurers issuing the policies required under this Article 11 deny coverage to Owner, the Contractor or subcontractor will, upon demand by Owner, defend and indemnify the Owner at the Contractor's or Subcontractor's sole expense.

§ 11.0.10 The Contractor shall require subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of Work by the subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the Work, be deemed a waiver by Owner of Contractor's or the subcontractor's insurance obligations set forth herein.

**§ 11.1 Contractor's Insurance and Bonds CONTRACTOR'S LIABILITY INSURANCE**

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents and the Contractor's Subcontractors shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect them and the Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (see Sections 11.1.2.1 and 11.1.5);
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18; and
- .9 Claims for damages to the Work itself, through builder's risk insurance.

§ 11.1.1.9 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- a. Premises Operations (including X, C and U coverages as applicable).
- b. Independent Contractors' Protective.
- c. Products and Completed Operations.
- d. Personal Injury Liability with Employment Exclusion deleted.
- e. Contractual, including specified provision for Contractor's obligation under 3.18.
- f. Owned, non-owned and hired motor vehicles.
- g. Broad Form Property Damage including Completed Operations.

§ 11.1.1.10 The Contractor shall provide such General Liability Insurance by a Commercial General Liability Policy on an occurrence policy. The Contractor shall maintain this policy from the date of Commencement until one year after the date of final payment.

Commercial General Liability (Occurrence Basis) must:

- (i) be on ISO form CG 00 01 12 04, or equivalent;
- (ii) not modify the separation of insured language;
- (iii) designate Construction Project(s) General Aggregate Limits (ISO CG 25 03 97), or equivalent;



- (iv) delete the contractual liability exclusion with respect to personal injury; and
- (v) state that the defense of any claim and all claim or suit expenses will be provided as an additional benefit and will not be included within the limit of liability.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Insurance required by Section 11.1.1 shall be written for not less than limits of liability specified below or required by law, whichever coverage is greater. Coverages, on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The stipulated limits of liability aggregate coverages shall be for this Project. The following limits are required:

- .1 Commercial General Liability including Premises Operations, Independent Contractors' Protective, Products and Completed Operations, Broad Form Property Damage, Contractual Insurance, and Personal Injury with coverage not less than the following:
  - (a) General Aggregate:  
\$2,000,000.00 and it shall apply, in total, to this Project only.
  - (b) Products and Complete Operations Aggregate:  
\$2,000,000.00 to be maintained for two years after final payment.
  - (c) Personal and Advertising Injury, with Employment Exclusion Deleted:  
\$1,000,000.00
  - (d) Each Occurrence:  
\$1,000,000.00
  - (e) Fire Damage (any one fire):  
\$50,000.00
- .1.1 Contractual Liability:
  - 1. Property Damage shall be included in Commercial General Liability Coverage.
  - 2. Insurance sufficient to cover Contractor's contractual indemnities.
- .2 Business Auto Liability (including owned, non-owned, hired, or any other vehicles) with limits not less than the following:
  - (a) Bodily injury and property damage with combined single limit of \$1,000,000.00.
- .3 Umbrella Excess Liability:
  - (a) \$2,000,000.00 over primary insurance and List Owner as additional insured.
- .4 All Risk Builders Risk Insurance:  
If Contractor is a Construction Manager at Risk, then, as specified in each Guaranteed Maximum Price Amendment, in a total amount equal to the Guaranteed Maximum Price; otherwise, in the total amount of the Contract Sum. See Section 11.3.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. Certificates of insurance with all required endorsements attached acceptable to the Owner shall be filed with the Architect and Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate, policy, and endorsement 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 to the Owner and Architect within five days of Contractor's first notice of the same. The Contractor shall also provide to the Owner prior to commencing the Work full copies of all insurance policies and endorsements required by the Contract

Documents. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required herein. The Contractor shall provide such written notice within five business days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

### **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.1.5 General Requirements**

#### **(a) Policies. All policies must:**

- (i)** Be issued by carriers having a Best's Rating of A or better, and a Best's Financial Size Category of Class VIII, or better, and/or *Standard & Poor Insurance Solvency Review of A-* or better, and admitted to engage in the business of insurance in the State in which the Project is located;
- (ii)** Be endorsed to be primary with the policies of all Owner being excess, secondary and noncontributing;

- (iii) Issued on an "occurrence based" policy;
- (iv) With respect to all liability policies except workers' compensation/employer's liability, be endorsed to include the Owner as "additional insured"; and
- (v) Contain a provision for 30 days' prior written notice by insurance carrier to Owner required for cancellation, nonrenewal, or substantial modification.

**(b) Limits, Deductibles and Retentions**

- (i) Except as expressly provided above, no deductible or self-insured retention in excess of \$25,000 without prior written approval of Owner.
- (ii) No policy may include an endorsement restricting, limiting, or excluding coverage in any manner without the prior written approval of Owner.

**(c) Forms**

- (i) If the forms of policies, endorsements certificates, or evidence of insurance required by Article 11 of this Agreement are superseded or discontinued, Owner will have the right to require other equivalent forms; and
- (ii) Any policy or endorsement form other than a form specified in Article 11 of this Agreement must be approved in advance and in writing by Owner.

**(d) Evidence of Insurance. Insurance must be evidenced as follows:**

- (i) Copies of the required insurance policies, declaration, and endorsements themselves;
- (ii) ACORD Form 25 *Certificates of Liability Insurance* for liability coverages;
- (iii) ACORD Form 28 *Evidence of Property Insurance* for property coverages;
- (iv) Evidence to be delivered to Owner prior to commencing Work on the Project and at least thirty (30) days prior to the expiration of current policies; and
- (v) ACORD forms must:
  - a. Show the Owner as Certificate holders (with Owner's mailing address);
  - b. Show Contractors as the "Named Insured";
  - c. Show the insurance companies producing each coverage and the policy number and the policy date of each coverage;
  - d. Name the producer of the certificate (with correct address and telephone number) and have the signature of the authorized representative of the producer;
  - e. Specify the additional insured status (on a separate ACORD Form 45);
  - f. State the amounts of all deductibles and self-insured retentions;
  - g. Show the primary status and aggregate limit per project where required;
  - h. Be accompanied by copies of all required additional insured endorsements; and
  - i. The phrases "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents, or representatives" must be deleted from the cancellation provision of the ACORD 25 certificate and the following express provision added: "This is to certify that the policies of insurance described herein have been issued to the Insured for whom this certificate is executed and are in force at this time. In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, 30 days' prior written notice will be given to the certificate holder by certified mail or registered mail, return receipt requested."

**(e) Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.**

**§ 11.1.5.1 ADDITIONAL INSURED STATUS AND CERTIFICATES OF INSURANCE**

The provisions of this Section 11.1.5.1 are in addition to any other requirements of the Contractor under this Agreement, and do not reduce or otherwise limit any of Contractor's duties.

Owner, along with their respective officers, agents and employees, shall be named on the Commercial General Liability Insurance as Additional Insured (CG 20 10 04 13) for Ongoing Operations and Product's/Completed Operations (CG 20 37 04 13) on the Contractor's and any Subcontractor's Commercial General Liability policy, to the extent that it is permitted by law. This insurance must be primary and noncontributory with respect to the Additional Insureds. This insurance shall remain in effect as set forth below, in the "Continuation of Coverage" provision. Furthermore, Owner, along with their respective officers, agents and employees, shall be named as an Additional Insured to the Contractor's and any Subcontractor's Commercial Auto Liability Policies, to the extent that it is permitted by the law.

It is expressly understood by the parties to this Contract that it is the intent of the parties that any insurance obtained by Owner is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Contractor, the Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or any directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile, Workers' Compensation and Excess Liability policies in favor of Owner, and this clause shall apply to the Owner's officers, agents and employees, with respect to all projects during the policy term.

Prior to commencement of Work, Contractor shall submit a Certificate of Insurance to Owner and the aforementioned Additional Insured Endorsements as required by this contract. The Certificate shall be in a form approved for use in the state in which the Work is to take place. Copies of insurance policies shall promptly be made available to Owner upon request. Contractor or Subcontractor's Insurance Broker shall endeavor to notify Owner of any change in policy or Notice of Cancellation at least 30 days prior to such change or notice taking effect.

The policies required hereunder shall not contain any exclusion or other provision that would deny coverage for a claim made by Owner due to Owner's status as an additional insured.

### **CANCELLATION, RENEWAL AND MODIFICATION**

The Contractor shall maintain in effect all insurance coverages required under this Agreement at the Contractor's sole expense and with insurance companies acceptable to Owner until final completion and acceptance of the entirety of the Contract Work; or longer if so provided in the Agreement such as with respect to completed operations coverage. Certificates of Insurance showing required coverage to be in force must be delivered to Owner prior to commencement of the Contract Work. In the event the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, this shall be considered a material breach of the contract, entitling Owner, at its sole discretion, to purchase such equivalent coverage as desired for Owner's benefit and charge the expense to the Contractor, or, in the alternative, exercise all remedies otherwise provided in the contract, or as permitted by law or equity.

### **CONTINUATION OF COVERAGE**

The Contractor shall continue to carry Completed Operations Liability Insurance for at least ten (10) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is later. The Contractor shall furnish Owner evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

### **§ 11.3 Waivers of SubrogationPROPERTY INSURANCE**

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be



~~effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~ **BUILDER'S RISK INSURANCE** Contractor shall obtain, at its expense, a builder's risk "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the initial Contract Sum (or, if the Project is a Construction Manager at Risk project, Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, flood, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Contractor, Subcontractors, and Sub-subcontractors and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Contractor shall be responsible for maintaining said builder's risk insurance until the date of Final Completion. If this policy excludes Employee Theft or Dishonesty coverage, including Third Parties, Contractor shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner.

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.2** For any claim made against the builder's risk insurance, the deductible shall not exceed \$2,500 for a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of less than \$4 million. For a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of \$4 million or more, the deductible shall not exceed \$5,000.

**§ 11.3.5** Partial occupancy or use shall not commence until the insurance company providing this insurance has consented in writing, by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain such consent and shall take no action without written mutual consent that would cause cancellation, lapse, or reduction of this insurance.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Contractor shall procure and maintain all bonds required for the Work by law or the Contract Documents. Each bond must be in a total amount equal to 100% of the Contract Sum, or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project, whichever is applicable. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. Except as provided below, such bond shall be furnished to Owner before any work begins and not later than five business days after execution of the Contract by Owner. (If the Guaranteed Maximum Price is not known at the time that a Construction Manager at Risk contract is awarded, then the sum of the payment and performance bonds must each be in an amount equal to the Project budget. The Construction Manager at Risk shall deliver the bonds not later than the tenth day after the date the Construction Manager at Risk executes the Contract, unless the Construction Manager at Risk furnished a bid bond or other financial security acceptable to the Owner to ensure that the Construction Manager will furnish the required payment and performance bonds when the Guaranteed Maximum Price is established.) All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2253, or their successors. The surety company shall have a rating of not less than "A-X" according to the latest posted ratings on the A.M. Best website, [www.ambest.com](http://www.ambest.com). The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then 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 amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.



§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.11.4.3 The Contractor shall deliver copies of the required bonds to the Owner and Architect not later than five business days after execution of the Contract by Owner. All bonds will be reviewed by the Architect for compliance with the Contract Documents. 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 with Architect's recommendation.

§ 11.4.4 All bonds shall be originals. The Contractor 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 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§11.5 Adjustment and Settlement of Insured Loss**

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

#### **§ 11.6 WORKERS' COMPENSATION INSURANCE**

A copy of a certificate of insurance 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 is required for the duration of the Project.

Duration of the Project includes the time from the beginning of the Work on the Project until the Contractor's/person's Work on the Project has been completed and accepted by the governmental entity.

Persons providing services on the Project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor 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 that 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 do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The Contractor 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 401.011(44) for all employees of the Contractor providing services on the Project for the duration of the Project.

The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor 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.

The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. 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
2. No later than seven days after receipt by the Contractor, 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.

The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

The Contractor 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.

The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. 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 401.011(44) for all of its employees providing services on the project for the duration of the project;
2. Provide to the Contractor, 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;
3. Provide the Contractor, 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;
4. Obtain from each other person with whom it contracts, and provide to the Contractor:
  - a. A certificate of coverage, prior to the other person beginning Work on the Project; and
  - b. 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;

5. Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
6. Notify the governmental entity in writing by certified mail or personal delivery, within ten (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
7. Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor 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. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i).

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§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the ~~Architect, Architect or Owner,~~ be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the ~~Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate.~~ costs of such uncovering and replacement shall be at Owner's expense. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

...

§ 12.2.1.2 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during

that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

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§ 12.2.6 Contractor shall 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 the Construction Documents or the Contract Documents or by defects in the Work.

§ 12.2.7 **The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor.**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be ~~reduced as appropriate and equitable~~ reduced. Such adjustment shall be effected whether or not final payment has been made.

...

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ Exclusive venue for any action arising out of the Project or the Contract Documents is in the state courts of the county in which the Owner's administrative offices are located.

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§ 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. ~~Unless otherwise provided, the Contractor shall~~ The Contractor shall coordinate with Architect and Owner to make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to selected by the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

...

~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located in accordance with the requirements of the law.

§ 13.7 Any right to recovery of attorney fees available under Texas Local Government Code Chapter 271, Subchapter I, is hereby waived.

## § 13.9 RECORDS

§ 13.9.1 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the

Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within 10 days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

§ 13.9.2 If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.9.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.9.1.

§ 13.9.4 Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.9.5 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

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- ~~.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or~~
- ~~.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment of undisputed sums on a Certificate for Payment within the time stated in the Contract Documents; or~~
- ~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2:Documents.~~

...

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination, and no other amount.

§ 14.1.4 If the Work is stopped for a period of 60-90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work 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 Contractor may, upon seven-twenty additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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- ~~.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or~~
- ~~.4 otherwise is guilty of substantial breach of a provision of the Contract Documents;~~
- ~~.5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;~~
- ~~.6 engages in worker misconduct in violation of Article 3.3.2 or engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain~~



gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

.7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

...

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.5. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

...

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent.

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.2 that an equitable adjustment is made or denied under another provision of the Contract.

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

...

A Claim is a demand or assertion by one of the parties the Contractor seeking, as a matter of right, payment of money, interpretation of any contractual responsibility, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Contractor. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. Contractor's failure to file a timely and proper claim

as described in this Article 15 constitutes a waiver of Contractor's right to make any claim or argument regarding that subject matter and a failure to follow contractual adjudication procedures necessary to maintain its right to seek any judicial relief against Owner. The requirements of this Section 15.1 (and all of its subparts) shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

#### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 24-90 days after occurrence of the event giving rise to such Claim or within 24-90 days after the claimant-Contractor first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party-Owner. In such event, no decision by the Initial Decision Maker is required. Claims under this Section 15.1.3.2 shall be initiated within 90 days after occurrence of the event giving rise to such Claim or within 90 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.3** All Claims by Contractor must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety (90) days after the occurrence of the event giving rise to such claim or within ninety (90) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, is waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

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**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal-were: (1) "Unusually Severe" for the period of time, (2) could not have been reasonably anticipated, and had an adverse effect on the scheduled construction-(3) were beyond the control and without the fault or negligence of the Contractor, and (4) had an adverse effect on critical path activities for more than 50% of the scheduled work day.

"Unusually Severe" weather is defined as weather that exceeds the weather conditions usually encountered at the Project site during the month involved, and is determined by calculating the amount to which the actual weather encountered at the Project site exceeds the average of the relevant weather data for the Project site for the previous 10 years, as collected by the National Oceanic and Atmospheric Administration (NOAA). Only weather delays that (1) exceed the greater of: (A) the 10-year NOAA average for the project site during the relevant month, or (B) the anticipated weather days identified in the Specifications (if any), and (2) meet all other criteria listed above may be compensable by an increase in Contract Time.

#### **§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- ~~.1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~.2 — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

#### **§ 15.1.7 Waiver of Claims for Consequential Damages**

~~The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes, but is not limited to, damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work. Contractor also waives all claims for increased cost to perform the Work as a direct result of Owner-caused delays or acceleration.~~

~~This waiver is applicable, without limitation, to all such damages due to Owner's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

~~§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, Section 12.2.2, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement-Contract. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner or litigation of any Claim.~~

~~§ 15.2.2 The Initial Decision Maker will review Claims and within ten 30 days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~

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~~§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

~~§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but is subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution-litigation. Nothing in this agreement is intended to waive any of Owner's immunity from suit or liability.~~

#### **§ 15.3. Contractual Adjudication Procedure for all Claims and Disputes**

- .1 The requirements of this Section 15.3 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.
- .2 **Pre-Litigation Grievance and Mediation.** Any claim, dispute or other matter in question that Contractor has against Owner shall be subject to full exhaustion of the grievance procedure found in Owner's GF (LOCAL) policy and non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by Contractor. In the case of any such claim, dispute, or other matter, by the Contractor against the Owner, including, but not limited to, any claim that the Owner has breached a contract, the Contractor may not file a lawsuit or demand mediation until the complaint procedure found in Owner's GF (LOCAL) policy has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit A-1. The Contractor's failure to timely file a grievance under policy GF (LOCAL), meet any requirement of this Article 15, or otherwise fully exhaust policy GF (LOCAL) in accordance with the policy's requirements is a failure to adhere to contractual adjudication procedures, a failure to exhaust remedies, a failure to fulfill conditions precedent, constitutes waiver, and is a bar to suit against the Owner.
- a. The timelines under Policy GF (LOCAL) are amended for purposes of this Agreement as follows: Contractor's complaint must be reduced to writing and filed within ninety (90) calendar days of the date the Contractor first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint. If the Contractor fails to meet this timeline, the Contractor will have failed to exhaust this remedy, will have failed to adhere to this contractual adjudication procedure, will have failed to fulfill conditions precedent to suit, will have waived the complaint, and will be barred from suing the Owner.
- b. Contractor agrees that, in order to fully exhaust its remedies under policy GF (LOCAL) and otherwise comply with this Section 15.3, Contractor must identify and articulate in writing the specific factual and legal basis for its claims. Any basis that is not identified and articulated by the Contractor as part of its complaint under GF (LOCAL) is waived by the Contractor and may not be asserted in any subsequent proceeding against the Owner.
- c. The following are each an independent condition precedent to the institution of civil proceedings by the Contractor against the Owner concerning the contested matter: 1) full exhaustion of claims through Owner's GF (LOCAL) policy as described herein, 2) full exhaustion of the Claims process referenced in the Agreement and the applicable A201, 3) a written demand by the Contractor for mediation, and 4) good faith and full participation in the mediation process.
- d. Following the full exhaustion of claims through Owner's GF (LOCAL) procedure, and upon receipt by Owner of Contractor's written demand for mediation, Owner may, at its option, either proceed with non-binding mediation of the dispute, or provide written notice to Contractor of Owner's decision to waive its right to compel such mediation. Owner's voluntary participation in any mediation or any other settlement discussions shall not be construed as a waiver of any failure by Contractor to exhaust remedies, follow contractual adjudication procedures, or otherwise comply with the Contract Documents. If the parties participate in mediation, the parties shall share the mediator's fee and any filing fees equally.

## **ARTICLE 16 MISCELLANEOUS**

**§ 16.1** Contractor agrees to waive any claim it has or may have against the Owner, the Architect, and their respective employees and officers, arising out of or in connection with the administration, evaluation, or recommendation of any bid; waiver of any requirements under the Bid Documents; or the Contract Documents; acceptance or rejection of any bids; and award of the Contract.

§ 16.3 The Contractor shall not execute a contract with any Subcontractor that contains an agreement or provision to arbitrate claims. In the event that a Subcontractor seeks to arbitrate a claim arising out of or relating to the Contract Document or this Project, Contractor shall not seek to join in such or any other arbitration proceeding relating to this Project.

§ 16.4 In the event that this modified AIA A201-2017 is not signed by the Architect, the absence of the Architect's signature does not affect the validity of this document as between Owner and Contractor for this Project, and shall not be interpreted as an indication that this modified AIA A201-2017 is not effective.





**OWNER**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DATE**

**CONTRACTOR**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DATE**

The Architect acknowledges that this modified AIA A201-2017 is the A201 that is applicable to the Project.

**ARCHITECT**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

~~§ 15.2.6~~ Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

~~§ 15.2.6.1~~ Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

~~§ 15.2.7~~ In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.8~~ If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

**§ 15.3 Mediation**

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

~~§ 15.3.2~~ The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~§ 15.3.3~~ Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

~~§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

#### **§ 15.4 Arbitration**

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

#### **§ 15.4.4 Consolidation or Joinder**

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:28:28 CT on 11/21/2022 under Order No. 2114280461 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*

PUBLIC COMPLAINTS

GF  
(LOCAL)

**Complaints**

In this policy, the terms “complaint” and “grievance” shall have the same meaning.

Other Complaint  
Processes

Complaints by members of the public shall be filed in accordance with this policy, except as required by the policies listed below. Some of these policies require appeals to be submitted in accordance with GF after the relevant complaint process:

1. Complaints concerning instructional resources shall be filed in accordance with EF.
2. Complaints concerning a commissioned peace officer who is an employee of the District shall be filed in accordance with CKE.

Complaints regarding refusal of entry to or ejection from District property based on Education Code 37.105 shall be filed in accordance with this policy. However, the timelines shall be adjusted as necessary to permit the complainant to address the Board in person within 90 calendar days of filing the initial complaint, unless the complaint is resolved before the Board considers it. [See GKA(LEGAL)]

**Guiding Principles**

Informal Process

The Board encourages the public to discuss concerns with an appropriate administrator who has the authority to address the concerns. Concerns should be expressed as soon as possible to allow early resolution at the lowest possible administrative level.

Informal resolution shall be encouraged but shall not extend any deadlines in this policy, except by mutual written consent.

Formal Process

An individual may initiate the formal process described below by timely filing a written complaint form.

Even after initiating the formal complaint process, individuals are encouraged to seek informal resolution of their concerns. An individual whose concerns are resolved may withdraw a formal complaint at any time.

The process described in this policy shall not be construed to create new or additional rights beyond those granted by law or Board policy, nor to require a full evidentiary hearing or “mini-trial” at any level.

**Freedom from  
Retaliation**

Neither the Board nor any District employee shall unlawfully retaliate against any individual for bringing a concern or complaint.

**General Provisions**

Filing

Complaint forms and appeal notices may be filed by hand-delivery, by electronic communication, including email and fax, or by U.S. Mail. Hand-delivered filings shall be timely filed if received by the appropriate administrator or designee by the close of business on

PUBLIC COMPLAINTS

GF  
(LOCAL)

the deadline. Filings submitted by electronic communication shall be timely filed if they are received by the close of business on the deadline, as indicated by the date/time shown on the electronic communication. Mail filings shall be timely filed if they are post-marked by U.S. Mail on or before the deadline and received by the appropriate administrator or designated representative no more than three days after the deadline.

Scheduling  
Conferences

The District shall make reasonable attempts to schedule conferences at a mutually agreeable time. If the individual fails to appear at a scheduled conference, the District may hold the conference and issue a decision in the individual's absence.

Response

At Levels One and Two, "response" shall mean a written communication to the individual from the appropriate administrator. Responses may be hand-delivered, sent by electronic communication to the individual's email address of record, or sent by U.S. Mail to the individual's mailing address of record. Mailed responses shall be timely if they are postmarked by U.S. Mail on or before the deadline.

Days

"Days" shall mean District business days, unless otherwise noted. In calculating timelines under this policy, the day a document is filed is "day zero." The following business day is "day one."

Representative

"Representative" shall mean any person who or organization that is designated by an individual to represent the individual in the complaint process.

The individual may designate a representative through written notice to the District at any level of this process. If the individual designates a representative with fewer than three days' notice to the District before a scheduled conference or hearing, the District may reschedule the conference or hearing to a later date, if desired, in order to include the District's counsel. The District may be represented by counsel at any level of the process.

Consolidating  
Complaints

Complaints arising out of an event or a series of related events shall be addressed in one complaint. An individual shall not file separate or serial complaints arising from any event or series of events that have been or could have been addressed in a previous complaint.

Untimely Filings

All time limits shall be strictly followed unless modified by mutual written consent.

If a complaint form or appeal notice is not timely filed, the complaint may be dismissed, on written notice to the individual, at any point during the complaint process. The individual may appeal the dismissal by seeking review in writing within ten days from the date



PUBLIC COMPLAINTS

GF  
(LOCAL)

of the written dismissal notice, starting at the level at which the complaint was dismissed. Such appeal shall be limited to the issue of timeliness.

Costs Incurred

Each party shall pay its own costs incurred in the course of the complaint.

Complaint and  
Appeal Forms

Complaints and appeals under this policy shall be submitted in writing on a form provided by the District.

Copies of any documents that support the complaint should be attached to the complaint form. If the individual does not have copies of these documents, they may be presented at the Level One conference. After the Level One conference, no new documents may be submitted by the individual unless the individual did not know the documents existed before the Level One conference.

A complaint or appeal form that is incomplete in any material aspect may be dismissed but may be refiled with all the required information if the refiling is within the designated time for filing.

**Level One**

Complaint forms must be filed:

1. Within 15 days of the date the individual first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint or grievance; and
2. With the lowest level administrator who has the authority to remedy the alleged problem.

If the only administrator who has authority to remedy the alleged problem is the Superintendent or designee, the complaint may begin at Level Two following the procedure, including deadlines, for filing the complaint form at Level One.

If the complaint is not filed with the appropriate administrator, the receiving administrator must note the date and time the complaint form was received and immediately forward the complaint form to the appropriate administrator.

The appropriate administrator shall investigate as necessary and schedule a conference with the individual within ten days after receipt of the written complaint. The administrator may set reasonable time limits for the conference.

Absent extenuating circumstances, the administrator shall provide the individual a written response within ten days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the administrator may consider information provided at the Level One conference and any other

PUBLIC COMPLAINTS

GF  
(LOCAL)

relevant documents or information the administrator believes will help resolve the complaint.

**Level Two**

If the individual did not receive the relief requested at Level One or if the time for a response has expired, he or she may request a conference with the Superintendent or designee to appeal the Level One decision.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level One response or, if no response was received, within ten days of the Level One response deadline.

After receiving notice of the appeal, the Level One administrator shall prepare and forward a record of the Level One complaint to the Level Two administrator. The individual may request a copy of the Level One record.

The Level One record shall include:

1. The original complaint form and any attachments.
2. All other documents submitted by the individual at Level One.
3. The written response issued at Level One and any attachments.
4. All other documents relied upon by the Level One administrator in reaching the Level One decision.

The Superintendent or designee shall schedule a conference within ten days after the appeal notice is filed. The conference shall be limited to the issues and documents considered at Level One. At the conference, the individual may provide information concerning any documents or information relied upon by the administration for the Level One decision. The Superintendent or designee may set reasonable time limits for the conference.

The Superintendent or designee shall provide the individual a written response within ten days following the conference. The written response shall set forth the basis of the decision. In reaching a decision, the Superintendent or designee may consider the Level One record, information provided at the Level Two conference, and any other relevant documents or information the Superintendent or designee believes will help resolve the complaint.

Recordings of the Level One and Level Two conferences, if any, shall be maintained with the Level One and Level Two records.

PUBLIC COMPLAINTS

GF  
(LOCAL)

**Level Three**

If the individual did not receive the relief requested at Level Two or if the time for a response has expired, he or she may appeal the decision to the Board.

The appeal notice must be filed in writing, on a form provided by the District, within ten days of the date of the written Level Two response or, if no response was received, within ten days of the Level Two response deadline.

The Superintendent or designee shall inform the individual of the date, time, and place of the Board meeting at which the complaint will be on the agenda for presentation to the Board.

The Superintendent or designee shall provide the Board the record of the Level Two appeal. The individual may request a copy of the Level Two record.

The Level Two record shall include:

1. The Level One record.
2. The notice of appeal from Level One to Level Two.
3. The written response issued at Level Two and any attachments.
4. All other documents relied upon by the administration in reaching the Level Two decision.

The appeal shall be limited to the issues and documents considered at Level Two, except that if at the Level Three hearing the administration intends to rely on evidence not included in the Level Two record, the administration shall provide the individual notice of the nature of the evidence at least three days before the hearing.

The District shall determine whether the complaint will be presented in open or closed meeting in accordance with the Texas Open Meetings Act and other applicable law. [See BE]

The presiding officer may set reasonable time limits and guidelines for the presentation, including an opportunity for the individual and administration to each make a presentation and provide rebuttal and an opportunity for questioning by the Board. The Board shall hear the complaint and may request that the administration provide an explanation for the decisions at the preceding levels.

In addition to any other record of the Board meeting required by law, the Board shall prepare a separate record of the Level Three presentation. The Level Three presentation, including the presentation by the individual or his or her representative, any presentation

PUBLIC COMPLAINTS

GF  
(LOCAL)

from the administration, and questions from the Board with responses, shall be recorded by audio recording, video/audio recording, or court reporter.

The Board shall then consider the complaint. It may give notice of its decision orally or in writing at any time up to and including the next regularly scheduled Board meeting. If the Board does not make a decision regarding the complaint by the end of the next regularly scheduled meeting, the lack of a response by the Board upholds the administrative decision at Level Two.

"General Decision Number: TX20220218 08/05/2022

Superseded General Decision Number: TX20210218

State: Texas

Construction Type: Building

Counties: Palo Pinto and Panola Counties in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

|   |   |
|---|---|
| If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022: | <ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.</li> </ul>  |
| If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:         | <ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.</li> </ul> |

The applicable Executive Order minimum wage rate will be



adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

|                     |                  |
|---------------------|------------------|
| Modification Number | Publication Date |
| 0                   | 01/07/2022       |
| 1                   | 02/25/2022       |
| 2                   | 08/05/2022       |

ASBE0021-002 08/01/2017

|   | Rates    | Fringes |
|---|----------|---------|
| ASBESTOS WORKER/HEAT & FROST INSULATOR..... | \$ 25.87 | 7.23    |

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BOIL0074-004 01/01/2021

Palo Pinto

|                  | Rates    | Fringes |
|------------------|----------|---------|
| Boilermaker..... | \$ 29.47 | 24.10   |

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BOIL0587-004 01/01/2021

Panola County

|                  | Rates    | Fringes |
|------------------|----------|---------|
| Boilermaker..... | \$ 29.47 | 24.10   |

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\* IRON0263-017 06/01/2022

|                              | Rates    | Fringes |
|------------------------------|----------|---------|
| Ironworker, reinforcing..... | \$ 27.14 | 7.68    |

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\* LAB00154-022 05/01/2008

|                           | Rates | Fringes |
|---------------------------|-------|---------|
| Laborers: (Mason Tender - |       |         |

Cement/Concrete).....\$ 14.25 \*\* 2.90

\* SUTX2009-105 04/20/2009

|  | Rates       | Fringes |
|--|-------------|---------|
| BRICKLAYER.....  | \$ 20.00    | 0.00    |
| CARPENTER, Includes<br>Acoustical Ceiling<br>Installation, and Hardwood<br>Floor Installation..... | \$ 14.30 ** | 0.00    |
| CEMENT MASON/CONCRETE FINISHER...  | \$ 13.29 ** | 0.00    |
| ELECTRICIAN.....   | \$ 18.06    | 4.87    |
| IRONWORKER, STRUCTURAL.....  | \$ 15.48    | 0.00    |
| LABORER: Common or General.....  | \$ 9.73 **  | 0.00    |
| LABORER: Landscape &<br>Irrigation.....  | \$ 8.50 **  | 0.22    |
| LABORER: Mason Tender - Brick...   | \$ 12.02 ** | 0.00    |
| LABORER: Mortar Mixer.....   | \$ 12.00 ** | 0.00    |
| OPERATOR:<br>Backhoe/Excavator/Trackhoe.....   | \$ 11.00 ** | 0.00    |
| OPERATOR: Bulldozer.....   | \$ 13.00 ** | 0.31    |
| OPERATOR: Crane.....   | \$ 21.33    | 0.00    |
| OPERATOR: Forklift.....  | \$ 14.58 ** | 0.00    |
| OPERATOR: Loader (Front End)....   | \$ 10.54 ** | 0.00    |
| PAINTER: Brush, Roller and<br>Spray.....   | \$ 13.50 ** | 0.00    |
| PLUMBER.....   | \$ 20.38    | 4.74    |
| ROOFER.....  | \$ 13.64 ** | 1.80    |
| SHEET METAL WORKER.....  | \$ 17.00    | 0.00    |
| TILE SETTER.....   | \$ 15.00    | 0.00    |

TRUCK DRIVER.....\$ 12.52 \*\* 0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date

for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the

interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"



Article \_\_\_\_\_. *Workers' Compensation Insurance Coverage.*

*A. Definitions:*

*Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-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 contractor'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 contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor 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.*

*B. The contractor 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 contractor providing services on the project, for the duration of the project.*

*C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*

*D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor 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.*

*E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:*

Figure: 28 TAC §110.110(c)(7)

*(1) 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*

*(2) no later than seven days after receipt by the contractor, 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.*

*F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.*

*G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.*

*H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, 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.*

*I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:*

*(1) 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;*

*(2) provide to the contractor, 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;*

*(3) provide the contractor, 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;*

*(4) obtain from each other person with whom it contracts, and provide to the contractor:*

Figure: 28 TAC §110.110(c)(7)

*(a) a certificate of coverage, prior to the other person beginning work on the project; and*

*(b) 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;*

*(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*

*(6) 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*

*(7) 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.*

*J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor 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 division. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.*

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

# Addendum Summary

RFP 23001, CARTHAGE ISD MAY 2023 BOND – REQUEST FOR PROPOSALS

Meeting Date and Time: 12/2/2022 12:00 PM

To: Jarrod Bitter  
Superintendent of Schools  
Carthage Independent School District  
#1 Bulldog Dr  
Carthage, TX, 75633

Addendum: 001                      Prepared By: John Risi

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This addendum contains clarifications and attachments to RFP 23001 for the May 2023 Bond Scope for Carthage Independent School District. The original RFP was dated 11.22.2022:

## Summary of Revisions

### CLARIFICATIONS:

1. What is the approximate square foot of the terrazzo flooring at Baker Koonce Intermediate School?
  - a. 18,000 SF
2. What is the intent of the “proposal guarantee” described on page three of the RFP under section ADVERTISEMENT & NOTICE TO PROPOSERS?
  - a. To proof you are able to bond the total amount listed in the RFP.
3. Remove the Carthage Junior High School Roof Replacement from the scope of the RFP. Only Baker Koonce Koonce Intermediate and Baseball / Softball Complex are part of the RFP.
4. When is the intended completion date for Baseball / Softball Complex?
  - a. Substantial Completion for January of 2024.
5. Will the athletic lighting for the baseball and softball fields already be constructed and in place when we arrive on site?
  - a. Yes, the athletic lighting is part of baseball / softball phase 1 which is currently under construction.
6. Is the bid bond to be 5% of the total possible contract amount (\$28,500,00) or 5% of the total fee proposed?
  - a. Project Cost

7. If there are scopes that are already removed from the RFP the total estimated construction budget will be less than \$28,500,000. Fees vary based on the size of the project., lower fees on larger projects and higher fees on smaller projects. Can we please get an updated estimated construction budget?
  - a. \$28.0M
8. If the project bids the first week of April 2023 and election day is May 6, 2023 we will be asking bidders to hold pricing for over 30 days. Are there any contingencies planned for potential material price increases?
  - a. Contractors to evaluate and include as you determine.
9. Contractors and subcontractors no longer have access to a DPS Secure Site account. Our accounts were deactivated by TX DPS in December 2020 because they deemed that contractors and subcontractors did not meet the required criteria for continuing duties as stated in Texas Administrative Code (TAC) 153.1101 Sec 22.08341. I've attached our email correspondence with TX DPS for validation. Contractors and subcontractors currently have access only to <https://publicsite.dps.texas.gov> which is a name based (as opposed to fingerprint) site for convictions or deferred adjudications for Texas only. It is not a complete background check as required by SB 9. Therefore, no contractor will be able to sign and attach the Background History form as required on the proposal form. Will this form be revised to remove this requirement based on this information.
  - a. See attached revised page 30 of 36 for RFP 23001 "Background Form".
10. Page 3 of the RFP indicates the construction completion date will be September 2024. Page 18 indicates it will be September 2024 and July 30, 2024. Please clarify.
  - a. Baker Koonce Intermediate: September 2024
  - b. Baseball / Softball Complex: January 2024
  - c. Once CM is onboard the team is looking for input on phasing and duration.
11. Page 21, Item 1 says that the Fee for Construction Period Services shall be based on a percentage amount times final construction cost. Item 2 then ask us to describe how our fee is calculated and to list categories that are included in the Fee for Construction Services. This is very confusing. As item one states fee is a percentage of the final construction cost, the rest of the GMP is cost of work. Please clarify what you are looking for on Item 2.
  - a. Clarify fee based on construction cost along with breakdown of the general conditions.
12. In the A133, Article [3.1.6.2](#) says that prior to the commencement of the schematic design, design development and construction documents the construction manager shall prepare schedules and estimates. What stage is the design in?
  - a. Currently undergoing Design Development. Requirements for Schematic Design are not applicable as the design team schedule has been accelerated.
13. Should Article 3.1.10 and Article 4.1.6 be removed since Article [1.1.6.1](#) was removed?
  - a. Yes
14. Article 3.2.1 says that we are to prepare a GMP prior to advertising or solicitation of subcontract proposals. Is this correct?
  - a. Preliminary estimate is needed.
15. Page 21, number 7 can you clarify what it is you are looking for?
  - a. Example of your pay app that would be turned in.
16. The proposal form has a blank for Pre-Construction Services Fee. Will this be submitted as a lump sum?
  - a. Yes
17. The proposal form has a blank for Construction Services. Will this be submitted as a percentage?
  - a. Yes
18. What is to be included in the Construction Services Fee? Typically we would have fees, general conditions, and general requirements.
  - a. See attached revised page 24 of 36 for RFP 23001 "Proposal Form".

End of Addendum Summary

CC:

**Attachments:** 2022.12.01\_RFP 23001\_Pre-Proposal SignIn Sheet

2022.12.01\_RFP 23001\_Baker Koonce Map

2022.12.02\_RFP 23001\_Proposal Form

2022.12.02\_RFP 23001\_Background Form

*Please review this information and advise writer of any corrections, misunderstandings, or additions within 3 business days.*



# Please Sign In

CARTHAGE ISD – BB/SB PH2 & BAKER KOONCE – PRE-PROPOSAL MEETING, RFP 23001

Date: 12/1/2022 9:00 AM

| Name               | Company      | Phone        | Email                  |
|--------------------|--------------|--------------|------------------------|
| JOHN RISI          | CORGAN       | 214.757.1733 | JOHN.RISI@CORGAN.COM   |
| Melynda Hensley    | WRL          | 903.894.7768 | melynda@wrl-gc.com     |
| John David Jackson | WRL          | 903-752-7396 | Jackson@wrl-gc.com     |
| Benjamin Romines   | SCI          | 903.592.9311 | bromines@scitx.com     |
| JUSTIN BROWNAX     | COI          | 501-516-0297 | JUSTIN.BROWNAX@COI.com |
| Jarrold Bitter     | Carthage ISD |              |                        |



**PROPOSAL FORM**  
For  
**CONSTRUCTION MANAGER AT RISK**  
**RFP 23001**  
**CARTHAGE INDEPENDENT SCHOOL DISTRICT**

Submitted by: \_\_\_\_\_

Date: \_\_\_\_\_ Phone No.: \_\_\_\_\_

To: Carthage Independent School District  
Attn: Chief Financial Officer  
#1 Bulldog Dr,  
Carthage, Texas 75633

Having examined the RFP 23001 prepared by Carthage Independent School District, dated December 20, 2019, and having examined site conditions, the undersigned proposes to perform all work as CMAR for the above-named Projects. With an agreed upon GMP the undersigned proposes to furnish all labor, equipment and materials to complete the above-named Projects.

**PROPOSED FEES**

**Based on your company's plan to complete this Project, indicate your proposed fees and prices for the Scope of Work for this Project.** It is anticipated that the District will enter into a percent-based contract with the construction manager during construction. Carthage Independent School District does not intend to share any construction cost savings with the CMAR; therefore, the cost savings methodology should not be submitted with the proposal. Base the computed fees below on the estimated construction budgets as stated in this proposal.

**Pre-Construction Services Fees (lump sum):** \_\_\_\_\_ \$

To include budgeting / cost estimating, and schedule / phasing plans. NOTE: This amount to be paid only in the event the bond does not pass. Pre-Construction fees should also be included in the total Contractor Fee percentage below.

**Construction Services Fees (percentage):** \_\_\_\_\_ %

Expressed as a percentage of Cost of Construction for Labor, equipment, materials, and related costs of the work, staff included, and general conditions.

**ATTACHMENTS**

Acknowledge by initialing in the blank that the following items are attached to this proposal:

- Proposal Bond \_\_\_\_\_
- Felony Conviction Notice \_\_\_\_\_
- Certification Sheet \_\_\_\_\_
- Certification regarding Lobbying \_\_\_\_\_
- Background History \_\_\_\_\_
- Acknowledgement Form \_\_\_\_\_
- Non-Collusion Affidavit \_\_\_\_\_
- Statement of Qualifications (AIA – A305) \_\_\_\_\_
- Verification of Compliance with federal and state laws \_\_\_\_\_
- Conflict of Interest Questionnaire \_\_\_\_\_
- Disclosure of Interested Parties (Form 1295) \_\_\_\_\_

**CARTHAGE INDEPENDENT SCHOOL DISTRICT**

RFP 23001

**Agreement with Carthage Independent School District  
Regarding Criminal History Background Searches with Vendors/Contractors**

\_\_\_\_\_ (CMaR Name) will be in compliance with the Senate Bill 9 mandate in regards to required background searches for all companies working with Carthage ISD as a vendor or contractor. My signature indicates that I will comply with Senate Bill 9 by conducting background searches on employees.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

**Attached: Copy of Information from Texas Education Agency and State Board of Education:**

**Instructions to School District Contractors Regarding Criminal History Background Searches Under Senate Bill 9**