

**South San Antonio ISD
West Campus Renovation
Phase 1
San Antonio, Texas
Construction Manager @ Risk**



4-23-2019

**South San Antonio Independent School District
5622 Ray Ellison Blvd.
San Antonio, Texas 78242
210-977-7000**

**Garza/Bomberger & Associates
Architects Planners
5545 Fredericksburg Road, Suite 100
San Antonio, Texas 78229
ph (210) 349-7000 Fax (210) 349-7820**



APRIL 23, 2019



April 23, 2019

WEST CAMPUS RENOVATION

South San Antonio I.S.D.

OWNER

South San Antonio Independent School District
5622 Ray Ellison Blvd.
San Antonio Texas 78242
Telephone: (210) 977-7000; Facsimile: (210) 977-7019

ARCHITECTS

Garza/Bomberger & Associates
5545 Fredericksburg Rd., Suite 100
San Antonio, Texas 78229
Telephone: (210) 349-7000; Facsimile: (210) 349-7820

CONSULTANTS

MEP Engineers:

MEP Engineering
9830 Colonnade Blvd., Suite 230
Telephone: (210) 349-1400; Facsimile: (210) 349-1465

Data & Communications Consultant:

Combs Consulting Group
8200 IH-10 West, Suite 103
San Antonio, Texas 78230
Telephone: (210) 698-7887; Facsimile: (210) 698-7889

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These Documents (inclusive of Plans, Specifications and Addenda) when used in their entirety are intended to describe the scope of the Work; both as specifically stated and as may be reasonably implied therefrom. The Architect, his Consultants and the Owner shall not be responsible for incomplete Bids, Proposals or Pricing due to the failure of the Contractor(s) to fully examine the Construction Documents in their entirety.

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Not Used



Jorge E. Flores, AIA

**INVITATION TO OFFERORS
(Construction Manager-At-Risk)**

DATE: April 23, 2019

TO: ALL CONTRACTORS

FROM: Dr. Alexandro Flores, Superintendent of Schools
South San Antonio Independent School District
5622 Ray Ellison Blvd.
San Antonio, TX 78242

PROJECT: Southside Independent School District (The Owner) proposes to construct a "**West Campus Implementation**" (The "Work").

General Contractors are invited to submit Competitive Sealed Proposals for a Construction Manager-At-Risk for the work in this project. The Construction Manager-At-Risk shall assume the risk for construction of the Project at the contracted price as a general contractor and provide consultation to the Owner regarding Construction during and after the design of the facility. Competitive sealed Proposals will be accepted from any responsible General Contractor.

Competitive sealed Proposals are to be submitted in accordance with, and under the terms of, this invitation and the accompanying instructions.

COMPETITIVE SEALED PROPOSALS: It is the intent of the South San Antonio Independent School District to award the contract for this project pursuant to the requirements of the Texas Education Code Sections 44.031 and 44.034.

Pursuant to The Texas Education Code Sections 44.031 and 44.034, the Owner has chosen the acceptance of "Competitive Sealed Proposals" as the method of acceptance of quotations on the work described in the Contract Documents. Any usage of the term "Bid" or "Bidding" contained in the Contract Documents, and referring to the submission of a cost or proposal by the Contractor for the intent of securing award of the Contract, shall be understood to refer to the submission of a "Competitive Sealed Proposal". Any usage of the term "Bidder" contained in the Proposal Documents or Contract Documents shall be understood to refer to the General Contractor making the Proposal.

Proposals submitted to the Owner for consideration shall accurately reflect the scope of the work as described in, and implied by, the Contract Documents and shall be accompanied by a Bid Bond as described in the Contract Documents.

The Owner reserves the right, and intends to exercise the right, as allowed by The Texas Education Code, as interpreted by the Owner's Legal Counsel, to qualify selected Contractors for consideration to award. The qualifying process shall be in accordance with the guidelines established by The Texas Education Code Section 44.031 and 44.034.

Further, the Owner reserves the right, and intends to exercise the right, as allowed by The Texas Education Code, as interpreted by the Owner's Legal Counsel, to enter into negotiations with one or more qualifying Contractors after receipt of sealed Proposals, to make a final decision for award within the budget limitations for this project established by the School District's Board of Trustees.

DESCRIPTION OF WORK: The Work is generally described as Construction of a West Campus Renovation for the South San Antonio ISD. The completed facility is approximately 8,000 square feet.

TYPE OF PROPOSAL: Competitive Sealed Proposal for a Construction Manager-At-Risk.

ESTIMATED PROJECT BUDGET: One Million, Five Hundred Thousand Dollars (\$1,500,000.00).

PRE-PROPOSAL CONFERENCE: A Pre-Proposal Conference will be conducted at 2:00 p.m. on Thursday, May 2, 2019 at the offices District's office located at 5622 Ray Ellison Blvd., San Antonio, TX 78242. All persons desiring to submit a bid are encouraged to attend this conference.

TIME OF COMPLETION: The Contractor shall agree to (1) commence the Work within 10 days after Notice to Proceed with Construction is given (2) Complete the West Campus Implementation suitable for the Owner's Beneficial Occupancy and use on or before August 12, 2019.

The contract for this work shall be date certain and time of completion shall not be extended for any reason what so ever. Contractor shall include all overtime costs incurred in order to complete the work of this contract on time.

PROPOSAL DOCUMENTS: Proposal Documents may be obtained from the office of the Architect. No partial sets of Proposal Documents will be issued by the Architect and the Owner and/or Architect will not be responsible for errors or misinterpretations resulting from the issue of incomplete sets of Proposal Documents.

In addition to the above, copies of the proposal documents may be examined at:

Virtual Builders' Exchange
www.virtualbx.com
4047 Naco-Perrin, Ste 100
San Antonio, Texas 78217
210-564-6900

The Blue Book Building &
Construction Network
www.thebluebook.com
844-843-0106

iSqFt a ConstructConnect company
www.isqft.com
800-364-2059

RECEIPT AND OPENING OF PROPOSALS: Proposals will be received until **2:00 p.m., THURSDAY, MAY 9, 2019.** At such time, all proposals timely received will be publicly opened and read aloud in the Boardroom of the South San Antonio Independent School District, 5622 Ray Ellison Blvd., San Antonio, Texas 78242. The proposal, proposal security and other documents required to be submitted with the proposal shall be enclosed in a sealed, opaque envelope, addressed to the Board of Trustees of South San Antonio Independent School District, and identified as a proposal for the West Campus Renovation for South San Antonio Independent School District. If the proposal is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "Sealed Proposal Enclosed for the West Campus Implementation" on the face thereof.

Except as otherwise provided in the Instructions below, oral, telephonic or telegraphic proposals are invalid, and will not receive consideration. Proposals received after the time and date for receipt of proposals will be returned unopened. Each General Contractor shall assume full responsibility for timely delivery of its proposal to the location designated for receipt of proposals.

South San Antonio Independent School District will engage in a preliminary evaluation process of the timely submitted proposals and based upon the results of such evaluation will notify Offerors, who qualify for the interview, for the purpose of assisting South San Antonio ISD in its determination of which Proposal offers best value to South San Antonio ISD. Such interviews will be conducted at time, date and location to be determined and announced. Within forty-five (45) days after the opening of the Proposals, South San Antonio ISD will complete its evaluation and rank each Proposal submitted based on established criteria.

PROPOSAL SECURITY: Each proposal must be accompanied by a proposal security in the amount of five percent (5%) of the Estimated Project Budget, pledging that the successful Contractor will, within ten (10) calendar days after the successful Contractor is notified of the acceptance of its proposal, enter into a written contract with the Owner on the terms stated in the proposal documents, as evidenced by the unconditional execution and delivery of such contract, and furnish payment and performance bonds and evidence of insurance as required by the proposal documents. Should the successful Contractor fail or refuse to enter into such contract or furnish such bonds or evidence of insurance within the time above stated, such proposal security shall be forfeited to the Owner as liquidated damages, not as a penalty.

Such proposal security shall be in the form of cash, certified funds payable to the order of the Owner, or a bid bond in favor of the Owner. Any bid bond shall be on a form substantially similar to AIA Document A310 (1970 Edition) or on a form otherwise acceptable to the Owner, and shall be issued by a corporate surety duly authorized and admitted to do business in the State of Texas and licensed by the State of Texas to issue surety bonds. If the amount of the bid bond exceeds the legal underwriting limitation of the surety, the Contractor shall provide the Owner with evidence that the excess is protected by reinsurance or co-insurance in form and amount acceptable to the Owner. Any proposal which is not accompanied with proposal security in the form and amount required herein shall be rejected as nonconforming. The Owner shall have the right to retain the proposal security of all Contractors to whom an award is being considered until either, (i) the Contract has been unconditionally executed and delivered by the parties and any required payment and performance bonds and evidence of insurance have been furnished, or (ii) demand for return of the security is made by a bidder after the specified time within which proposals can be accepted, or (iii) all proposals have been rejected by the Owner, without the acceptance of any proposal.

SCHEDULE OF PROPOSAL DOCUMENTS: The Proposal Documents for this Project are as follows:

- a. 00 10 00 Invitation to Offerors
- b. 00 20 00 Instructions to Offerors
- c. 00 41 00 Proposal Form

Schedule 1 – Standard Form of Agreement Between Owner and Construction Manager Where the Construction Manager is Also the Constructor with Guaranteed Maximum Price Amendment

Schedule 2 – Contractor's Qualification & Non-Collusion Statement

Schedule 3 – Felony Conviction Notification

Schedule 4 – Hold Harmless Agreement
Schedule 5 – Financial Statement (By Offeror)
Schedule 6 – Specimen Form of Insurance Certificate
Schedule 7 – Proposal Security
00 72 00 General Conditions of the Contract for Construction (AIA A201 – 2007)
00 80 00 Owner’s Supplementary Conditions
00 80 00A Attachment ‘A’ – Labor and Wage Standards
Appendix B - Contractor’s Asbestos Free Affidavit
South San Antonio ISD School Calendars
Preliminary Floor Plans

Note: Texas Public Information Act: During the course of the selection process, the proposals are exempt from disclosure to the public under the Texas Public Information Act, because they contain information that, if released, would give advantage to a competitor or bidder. The proposals will however, upon the award of the contract, become a public record; and therefore, subject to disclosure to any person who makes a proper request for review of the documents. Some of the information you may provide in your proposals will contain commercial or financial information which you may assert are privileged or confidential based upon the statute, or which you feel may cause substantial competitive harm to your business if disclosed by the District to a third-party even after the award. You may be entitled to protect this information at the time the request for disclosure is made; however, you will need to consult your legal counsel to assure that this kind of information, if included in your response, is properly marked as confidential prior to submission. Wholesale marking of your entire proposal “Confidential” or “Proprietary” will not be effective. If information is so marked, the District will use its best efforts to notify you that it has received a request for the information in order to allow for you to argue its exemption to the Attorney General and if objection is made, will disclose the information only in accordance with the Attorney General’s instructions.

**INSTRUCTIONS TO OFFERORS
(Construction Manager-At-Risk)**

1. CONTRACT DOCUMENTS: The proposal documents shall include the Invitation to Offerors, these Instructions to Offerors, the Contract Documents (as defined below), the proposal form and any other sample proposal and contract forms. The Contract Documents shall consist of the Agreement between South San Antonio Independent School District (“Owner”) and Construction Manager where the Construction Manager is also the Constructor (AIA Form A133 with 133-2009 ‘Exhibit A, Guaranteed Maximum Price Amendment’) the General Conditions to the Contract (AIA Form A201, 2007 Edition), the Supplementary and Other Conditions included with the “Proposal Documents”, and the Drawings, and all Addenda issued prior to execution of the contract. Each Offeror shall carefully study and compare the Contract Documents with one another and with any existing work or work under construction, shall examine the site and local conditions, and shall at once report to the Architect and Owner any errors, inconsistencies or ambiguities discovered. By submitting a proposal, the Offeror represents that the Offeror has prior experience on construction projects of the same or similar type, nature and class as the Work; that the Offeror has read and understands the Proposal Documents and the Contract Documents; that the proposal is made in accordance with the Proposal Documents and the Contract Documents; that the Offeror has carefully inspected the site, satisfied itself as to the nature and location of the Work and the character, quality, quantities, materials and difficulties to be encountered, the kind and extent of equipment and other facilities needed for performance of the work, the general and local conditions and other items which may affect the Work or its performance, and has correlated the Offeror’s site observations with the requirements of the Contract Documents; and that the proposal is based upon the materials, equipment and systems specified in or required by the Proposal Documents and the Contract Documents, without exception. The materials, products and equipment described in the Proposal Documents establish a standard of required function, dimension, appearance and quality for the Project. In no event shall request for substitutions be considered by Owner prior to the ranking of the proposals and commencement of contract negotiations with the highest ranked Offeror. Any discrepancy or conflict within the Drawings shall be brought to the attention of Architect and the Owner. Discrepancies or conflicts not brought to Architect’s and Owner’s attention and clarified during the proposal process for the Project will be deemed to have been priced in the more costly manner or difficult manner, and the better quality or greater quantity of the Work shall be provided by the Contractor in accordance with Architect’s interpretation.

2. ADDENDA: Offerors may request clarification or interpretation of proposal documents. Any such request must be in writing, and must be received by the Architect at least Four (4) days prior to the last date for receipt of proposals. Interpretations, corrections and/or changes of or to the proposal documents will be made by written Addendum. Any interpretations, corrections or changes of or to the proposal documents, made in any other manner will not be binding upon the Owner, and Offerors may not rely thereon. Addenda will be mailed and/or faxed to all who are known by the Architect to have received a complete set of proposal documents, and will be sent to the address of each Offeror furnished by such Offeror for such purposes at least seventy-two (72) hours in advance of the Proposal Opening date. In addition, copies of Addenda will be made available for inspection wherever proposal documents are on file for that purpose. Each Offeror shall acknowledge in its proposal its receipt of all Addenda issued. Failure of an Offeror to receive any such Addenda shall not relieve the Offeror from any obligation under its proposal as submitted. All Addenda so issued shall become a part of the Contract Documents.

3. FORM OF PROPOSAL: Proposals shall be submitted in one (1) original and all blanks on the proposal form shall be completed, in ink or type-written, with sums expressed in both words and figures (in case of discrepancy between the two, the amount written in words shall govern). All requested alternates shall be priced, and if no change in the base price is required, the phrase "No Change" shall be inserted into the appropriate location. The proposal shall include the legal name of the Offeror and shall indicate whether the Offeror is a sole proprietor, partnership, corporation or other legal entity. Each copy of the proposal shall be signed by the person or persons legally authorized to bind the Offeror. A proposal by a corporation shall name the state of incorporation of the Offeror, and shall include reasonable evidence of the authority of the person signing the proposal to bind the corporation. Offeror shall execute and deliver to Owner with its Proposal, each of the following:

- a) **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of Work Plus a Fee with a Guaranteed Maximum Price (AIA Form A133-2009 with 'Exhibit A, Guaranteed Maximum Price Amendment')**, a copy of which is attached to the Proposal Form as **Schedule 1**.
- b) **Contractor's Qualification Statement (AIA Form A305)**: Executed counterpart of the Contractor's Qualification Statement, a copy of which is attached to the Proposal Form as **Schedule 2**.
- c) **FELONY CONVICTION NOTIFICATION**: Executed (signed) counterpart of the Felony Conviction Notification, in the form attached to the Proposal Form as **Schedule 3**.
- d) **HOLD HARMLESS AGREEMENT**: Executed (signed and notarized) counterpart of the Hold Harmless Agreement, in the form attached to the Proposal Form as **Schedule 4**.
- e) **FINANCIAL STATEMENTS**: Current financial statements of the bidder, as of the most recent calendar (or fiscal) year ended and current monthly income and expense statements for the fiscal year to date, certified by the bidder to be true and correct, to be attached to the Proposal Form as **Schedule 5**. Financial Statements are considered proprietary property and are not subject to release under an Open Records Request.
- f) **SPECIMEN FORM OF INSURANCE CERTIFICATE**: A specimen form of insurance certificate (which may be marked "For Proposal Purposes Only") evidencing the coverages specified in the General Conditions and the Supplementary Conditions, on the most current edition of the ACORD form 25-S, to be attached to the Proposal Form as **Schedule 6**.
- g) **PROPOSAL SECURITY**: A certified check or bid bond issued by a surety authorized to issue surety bonds in the State of Texas in the amount equal to five percent (5%) of the Base Bid, plus all additive alternates, if applicable to be attached to the Proposal Form as **Schedule 7**.

Items 3(a) through (g) above are required by the Owner to adequately evaluate the Offeror's qualifications. Failure of the Offeror to deliver any such items with its proposal shall constitute a basis for rejection of the proposal by the Owner.

Note: Texas Public Information Act: During the course of the selection process, the proposals are exempt from disclosure to the public under the Texas Public Information Act, because they contain information that, if released, would give advantage to a competitor or bidder. The proposals will however, upon the award of the contract, become a public record; and therefore, subject to disclosure to any person who makes a proper request for review of the documents. Some of the information you may provide in your proposals will contain commercial or financial information which you may assert are privileged or confidential based upon the statute, or which you feel may cause substantial competitive harm to your business if disclosed by the District to a third-party even after the award. You may be entitled to protect this information at the time the request for disclosure is made; however, you will need to consult your legal counsel to assure that this kind of information, if included in your response, is properly marked as confidential prior to submission. Wholesale marking of your entire proposal "Confidential" or "Proprietary" will not be effective. If information is so marked, the District will use its best efforts to notify you that it has received a request for the information in order to allow for you to argue its exemption to the Attorney General and if objection is made, will disclose the information only in accordance with the Attorney General's instructions.

4. PROPOSAL SELECTION CRITERIA: Award of the Contract resulting from this solicitation shall be under the selection process described herein. A committee appointed by Owner will evaluate Proposals submitted in response to this solicitation. The three (3) divisions of selection criteria ("Divisions") are as follows:

- (A) Proposal Price and Other Terms (45%)
- (B) Relevant Experience and Reputation (30%)
- (C) Project Management Ability and Team Interview (25%)

Each of the Divisions has been assigned an appropriate weight by the Owner. Following an analysis and evaluation of the proposals, ranking of the Offerors will be made based upon the selection criteria. Subjective judgment on the part of the Owner is implicit in the criteria selection process. The application of the foregoing criteria selection process, permits placing technical and other considerations above total price. Therefore, the Owner reserves the right to award to other than the lowest proposed price. Once the Offerors have been ranked, the Owner will begin contract negotiations with the first ranked Offeror. If the Owner is unable to come to terms with the first ranked Offeror, discussions will be terminated and the Owner will proceed to the next ranked Offeror and repeat the process until a contract agreement is reached or all proposals are rejected.

Any Proposal may be considered unacceptable if the committee determines it fails to provide adequate information in technical and price proposals as specified in these Instructions to Offerors. Within 45 days after the opening of the proposals, the Owner shall evaluate and rank sequentially each proposal submitted in relation to the selection criteria.

5. MODIFICATIONS & PROPOSAL WITHDRAWAL: A proposal may not be modified, withdrawn or canceled by an Offeror for a period of ninety (90) days after the last date specified for receipt of proposals. Prior to the last date specified for receipt of proposals, a proposal may be modified or withdrawn by notice to the Owner's Director of Construction Management at the place designated for receipt of proposals. Such notice shall be in writing and executed by the Offeror. If by telegram, written confirmation executed by the Offeror shall be mailed and postmarked on or before the stated time set for receipt of proposals. Any modification shall be worded so as not to reveal the amount of the original proposal. Any proposal withdrawn may be resubmitted within the time designated for the receipt of proposals.

6. ACCEPTANCE AND/OR REJECTION OF PROPOSALS: The Owner may request from an Offeror a written interpretation of any term or statement in the proposal that is or appears unclear or subject to more than one interpretation, and may act upon such written interpretation. Conditional proposals will not be accepted. The Owner shall have the right to reject all proposals, to reject a proposal not accompanied by the required security, to reject a proposal which is in any way incomplete, irregular or nonconforming, or to reject a proposal which may otherwise be legally rejected for any reason. To the extent allowed by law, the Owner may waive any formality in any proposal.

Unless the Owner rejects all proposals, the Owner intends to award the Contract to the Offeror that offers the best value to the Owner based on the listed selection criteria. If the Owner is unable to reach a contract agreement with the selected Offeror, the Owner shall terminate further discussions and proceed to the next Offeror in the order of the selection ranking until a contract agreement is reached or all proposals are rejected. Time is of the essence, and the award of the contract to the successful Offeror is expressly conditioned upon (a) the Offeror's execution and delivery of the contract, and delivery of all required payment and performance bonds and evidence of insurance, within twenty (20) calendar days after the successful Offeror is notified of the acceptance of its proposal, and (b) the Offeror's timely fulfillment of any and all other preconditions expressly set forth in the Contract Documents. Should the Offeror fail to timely execute and deliver the contract, required bonds, evidence of insurance, or fail to timely fulfill any other such preconditions, the Owner may, at its option and discretion, without releasing, impairing or affecting its right to receive the security as damages for such failure, rescind the award and thereafter negotiate with and award the contract to the next ranked Offeror, or may reject all proposals. There will be no contractual obligation on the part of the Owner to any Offeror, nor will any Offeror have any property interest or other right in the contract or Work being proposed unless and until the contract is unconditionally executed and delivered by all parties, and all conditions to be fulfilled by the Offeror have either been so fulfilled by the Offeror or waived in writing by the Owner. Each Offeror by submission of a proposal waives any claim it has or may have against the Architect, its consulting Architects and their employees, any other consultants, and any trustees, officers and employees of Owner, connected with or rising out of the proposal administration, proposal evaluation, proposal recommendation, the award of the contract, or the rejection of any proposals.

7. INSURANCE, PAYMENT & PERFORMANCE BONDS AND OTHER SUBMITTALS: The successful Offeror shall deliver to the Owner, within the time specified in the proposal documents, evidence of insurance, original payment and performance bonds, and all other required submittals, in accordance with the requirements set forth in the Contract Documents.

8. TRENCH EXCAVATION PROTECTION: Specific reference is hereby made to those certain sections, divisions and parts of the Specifications which contain requirements for trench excavation protection with respect to the Work. Each Offeror should specifically note the fact that certain requirements with respect to such trench excavation protection must be satisfied prior to award of the Contract.

9. PREVAILING WAGE RATES: As set forth in the Contract Documents, each Offeror is advised that, if awarded the Contract, the Offeror must comply with the requirements of V.T.C.A., Government Code §2258.001 et seq., with respect to the work, and in this regard shall pay to and cause all of its subcontractors to pay not less than the general prevailing rate of per diem wages and the prevailing rate for legal holidays and overtime work, as ascertained by the Owner.

**COMPETITIVE SEALED PROPOSAL FORM
(Construction Management-At-Risk)**

Submit Prior to 2:00 p.m. on May 9, 2019

Submitted by: _____

Date: _____ Phone no.: _____ Fax No.: _____

To: Dr. Alexandro Flores, Superintendent of Schools
South San Antonio Independent School District
5622 Ray Ellison Blvd.
San Antonio, TX 78242

Having examined the Invitation to Offerors and Instructions to Offerors for the Project prepared by **Garza/Bomberger & Associates** the following is a breakdown of all proposed fees.

In submitting its Proposal, the undersigned agrees to the following:

- (i) Hold Proposal open for acceptance for 90 days.
- (ii) Accept right of Owner to reject any or all Proposals, to waive formalities and to accept the Proposal, which Owner considers most advantageous.
- (iii) By signing this Proposal Form, the undersigned in behalf of the Offeror affirms that, to the best of his knowledge, the information concerning this Proposal has been arrived at independently and is being submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other respondents in the award of this Proposal.

I. FEE PROPOSAL

A. PRECONSTRUCTION FEE

For all pre-construction phase services including cost estimating, scheduling, building systems and material cost analysis the total cost for these services list the lump sum amount you will charge.

Dollars \$ _____*
(Amount in figures)

* (If the amount is "zero", enter ".00", do not enter "no bid")

B. GENERAL CONDITIONS

For all General Conditions, list your proposed cost as a percentage of construction cost. Refer to **Schedule "A"** for all required items to be included in the CM's General Conditions cost.

_____ %**
(Percent)

** (General Conditions are based on an estimated project budget of \$1,500,000.00. Provide on a separate sheet, your increase, if any, in General conditions for each \$100,000.00 increase over the estimated project budget.

C. FEE

For overhead and profit, list your proposed fee as a percentage of construction cost.

_____ %
(Percent)

II. ADDENDA

Undersigned acknowledges receipt of Addenda Nos. _____

_____ dated _____, 20____,

III. PROPOSAL SECURITY

Proposal security in the form of a certified check or bid bond in the amount of five percent (5%) of the Estimated Budget for the Project, is attached hereto, as a guaranty that the Offeror will unconditionally execute a satisfactory contract and furnish the payment and performance bonds, insurance and satisfy all other requirements for execution and delivery of the Contract Documents and commencement of the work constituting the Project (the "Work").

IV. CONTRACTOR'S PERSONNEL

The Offeror agrees to employ the following individuals for the entire duration of the Work at the positions indicated, and agrees not to remove them from the Work nor replace them with others except as otherwise allowed in the Contract Documents or approved in writing by Owner:

Project Manager: _____

Project Executive: _____

Project Superintendent: _____

Project Clerk: _____

V. REPRESENTATIONS

By execution and submission of this Proposal, the Offeror hereby represents and warrants to Owner as follows:

(a) The Offeror has prior experience on construction projects of the same or similar type, nature and class as the Work progresses.

(b) The Offeror has read and understands the Proposal Documents and the Contract Documents, and this Proposal is made in accordance with the Proposal Documents.

(c) The Offeror has carefully inspected the Project site, and that from the Offeror's own investigation, the Offeror has satisfied itself as to the nature and location of the Work within the scope of the Project and the character, quality, quantities, materials and difficulties to be encountered; the kind and extent of equipment and other facilities needed for the performance of the Work; the general and local conditions and other items which may in any way affect the Work or its performance; and the Offeror has correlated the Offeror's site observations with the requirements of the Contract Documents. The Offeror understands and accepts the difficulties and costs associated with the Work and the Project site and the potential delays, disruptions in work and costs associated therewith and has included such considerations in its construction schedule and the Proposal amount.

(d) To the fullest extent permitted by applicable law, the Offeror waives any claim it has or may have against the Owner, the Architect, and their respective trustees, officers, shareholders, directors, partners, agents, contractors, consultants and employees arising out of or in connection with the administration, evaluation or recommendation of any offers; waiver of any requirements under the Proposal Documents or the Contract Documents; acceptance or rejection of any proposals; and the award of the Contract.

(e) The Project will be undertaken in accordance with the applicable provisions of Chapter 44 of the Texas Education Code.

VI. ATTACHED SCHEDULES

The following Schedules are attached to this Proposal Form and incorporated herein:

Schedule 1 – Standard Form of Agreement Between Owner and Construction Manager
Where the Construction Manager is Also the Constructor

Schedule 2 – Contractor's Qualification & Non-Collusion Statement

Schedule 3 – Felony Conviction Notification

Schedule 4 – Hold Harmless Agreement

Schedule 5 – Financial Statement (By Offeror)

Schedule 6 – Specimen Form of Insurance Certificate

Schedule 7 – Proposal Security

It is understood that the right is reserved by the Owner to reject any or all Proposals, or waive any informalities in the Proposal process.

Authorized Signature

Title

Name of Contracting Firm

Address

Telephone

Facsimile

Date

**THIS PROPOSAL FORM MUST BE SUBMITTED BY
2:00 p.m. on May 9, 2019**

**To: Dr. Alexandro Flores, Superintendent of Schools
South San Antonio Independent School District
5622 Ray Ellison Blvd.
San Antonio, TX 78242**

SCHEDULE 1

**STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION
MANAGER WHERE THE CONSTRUCTION MANAGER IS ALSO THE
CONSTRUCTOR**

DRAFT AIA® Document A133™ – 2009

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

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

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

<><>
<>

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

<><>
<>

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

<>
<>

The Architect:
(Name, legal status and address)

<><>
<>

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

<>
<>
<>
<>
<>
<>

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

<>
<>
<>
<>
<>
<>

The Architect's Designated Representative:

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

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(Name, address and other information)

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The Owner and Construction Manager agree as follows.



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. 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.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and

Construction Manager may agree, 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.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically 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 could 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 well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well 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

establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

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

§ 2.2.3 The Construction Manager shall include with the 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 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .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, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and 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.

§ 2.2.6 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. 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.

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

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall 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.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 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 by 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 obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (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, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and 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 and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, 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 Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 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. The Construction Manager shall also keep, and make available to the Owner and Architect, 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.

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

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 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. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 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 Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the 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.

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

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

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

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

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish 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.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, 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 a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« »

§ 4.1.3 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.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 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. (Insert rate of monthly or annual interest agreed upon.)

« » « »

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

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

« »

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

« »

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed « » (« ») of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

« »

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

§ 5.3 Changes in the Work

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

Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 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 Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee 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 5.1.2 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.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

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

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

§ 6.2 Labor Costs

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

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 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, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

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

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

§ 6.5.5 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.

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 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.

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

§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 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 negligence or failure to fulfill a specific responsibility of 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.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 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 6.8.

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 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 them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

§ 6.10 Related Party Transactions

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

§ 6.10.2 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 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, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the 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.

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

« »

§ 7.1.3 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 certified amount 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 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.)

§ 7.1.4 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 cash disbursements 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, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take 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 schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of « » (« »). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of « » (« ») from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made

exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, 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 Section 12.2.2 of AIA Document A201-2007, 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; and
- .3 a final Certificate for Payment has been issued by the Architect.

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:

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§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, 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 Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. 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 becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. 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 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, 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.)

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 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.)

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the 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 Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the 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 10.1.2:

- .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 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse 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.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

« »

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 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.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

« »

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

« »« »

(Printed name and title)

DOCUMENT 00 45 00

**SCHEDULE 2
CONTRACTOR'S QUALIFICATIONS STATEMENT
AND NON-COLLUSION STATEMENT**

This statement, fully executed, must be submitted to the Owner no later than 2:00pm on Thursday, May 9, 2019. Failure to comply may result in the rejection of the Contractors Proposal.

The undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

SUBMITTED TO: Dr. Alexandro Flores, Superintendent of Schools
South San Antonio Independent School District
5622 Ray Ellison Blvd.
San Antonio, TX 78242

SUBMITTED BY: Corporation
NAME: _____ Partnership
ADDRESS: _____ Individual
PRINCIPAL OFFICE: Joint Venture
PHONE: Other
FAX:

NAME OF PROJECT (IF APPLICABLE)

TYPE OF WORK:

___ General Construction ___ HVAC
___ Plumbing ___ Electrical
___ Other _____ (Please specify)

1. Organization

1.1 How many years has your organization been in business as a Contractor?

___ years.

1.2 How many years has your organization been in business under its present business name?

___ years.

1.2.1 Under what other or former names has your organization operated?

1.3 If your organization is a corporation, answer the following:

1.3.1 Date of incorporation:

1.3.2 State of incorporation:

1.3.3 President's name:

1.3.4 Vice-President's name:

1.3.5 Secretary's name:

1.3.6 Treasurer's name:

1.4 If your organization is a partnership, answer the following:

1.4.1 Date of organization:

1.4.2 Type of Partnership (if applicable)

1.4.3 Name(s) of general partner(s)

1.5 If your organization is individually owned, answer the following:

1.5.1 Date of organization:

1.5.2 Name of owner:

1.6 If the form of your organization is other than those listed above, describe it and name the principals:

2. Licensing

2.1 List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

2.2 List jurisdictions in which your organization's partnership or trade name is filed.

3. Experience

3.1 List the categories of work that your organization normally performs with its own forces.

3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details).

3.2.1 Has your organization ever failed to complete any work awarded to it?

YES NO

3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

YES NO

3.2.3 Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?

YES NO

3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details).

YES NO

3.4 On a separate sheet, list major projects your organization has in progress, giving the name of project, owner's contact person and phone number, architect, architect's contact person and phone number, contract amount, percent complete, and scheduled completion date.

3.4.1 State total worth of work in progress and under contract: _____
\$ _____

3.5 On a separate sheet, list the major projects your organization has completed in the past five years, giving the name of project, owner, owner contact person and phone number, architect, architect's contact person and phone number, contract amount, dates of start and completion, method of project delivery, brief description of scope of work, status of occupancy of the facility during construction, and percentage of the cost of the work performed with your own forces.

3.5.1 State average annual dollar amount of construction work performed during the past five years: _____ Dollars.

3.6 On a separate sheet, list the construction experience and present commitments of the key individuals of your organization.

3.7 List individuals and attach detailed resumes of the positions indicated below who will be assigned for the entire duration of the Project and may not be replaced except as allowed in the Contract Documents or approved in writing by Owner:

Project Manager:

Assistant Project Manager:

Project Superintendent:

Assistant Project Superintendent:

MEP Quality Control Specialist

3.8 Provide evidence in an attachment of sufficient resources necessary to manage, staff and successfully perform the Work. Provide a profile in addition to the above information to assist the Owner in its evaluation. Include an organizational structure and indicate the number and qualifications of key personnel. Include a discussion of the methods, tools, or procedures used to schedule the Work and complete projects on time. Include evidence of ability to obtain bonding, insurance and the ability to cover operating costs.

3.9 Describe in an attachment the Offeror's system for the selection, award and management of subcontractors and suppliers. Include methods to encourage subcontractors to accelerate their work schedule.

4. **References**

4.1 Trade References:

Name	Address
Telephone	

Name	Address
Telephone	

Name	Address
Telephone	

4.2 Bank References:

Name	Address
Telephone	

Name	Address
Telephone	

Name	Address
Telephone	

4.3 Surety: _____

4.3.1 Name of bonding company: _____

4.3.2 Name, address, and phone number of agent:

Name	Address
Telephone	

5. **Financing**

5.1 Financial Statement. The Offeror must submit a current report of his financial condition sworn to before a Notary Public.

For all business entities other than publicly held corporations, please provide the following:

Attach a financial statement, preferably audited, including your organization’s latest balance and income statement showing current assets, net fixed assets, other assets, current liabilities and other liabilities. Clearly indicate name and address of firm preparing financial statement, and date thereof. If the financial statement is not for the identical organization named above, explain the relationship and financial responsibility of the organization whose financial statement is provided (parent, subsidiary, etc.)

5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

YES NO

6. **Notification of Criminal History of Contractor**

Has any owner or operator of the business ever been convicted of a felony?

Yes No

If yes, please provide name, place, nature, and date of offense below:

Conviction of a felony by an Owner or Operator shall not automatically constitute disqualification of the Offeror. However, failure to provide advance notice of such conviction by the Offeror, or Offeror's misrepresentation of the conduct which resulted in the conviction, may lead to termination of an awarded contract pursuant to Section 14.2 of the contract documents.

7. Award to Nonresident Offerors

Is your business organized under the law of the State of Texas?

___ Yes ___ No

If no, what is your principal place of business?

Proposals from nonresident contractors shall be evaluated according to TEX. GOV'T CODE § 2252.002.

8. Signature

8.1 Dated at _____ this ___ day of _____, 20 ___.

Name of Organization

By:

Printed Name:

Title:

_____, being duly sworn, deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this ____ day of _____, 20 ___.

NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires:

Typed or Printed Name of Notary

NON-COLLUSION STATEMENT

NOTE: Bidders are required to submit the following "NON-COLLUSION STATEMENT" along with the signed "Sealed Bid" form and with any other documents as required by this bid. Questions regarding this requirement must be addressed to the Purchasing Department **prior** to the date and time of bid opening. Sufficient time must be allowed the Purchasing Department for response to questions. Therefore, it is in the best interest of all concerned, that questions, if any, be submitted, orally or in writing, to the Purchasing Department as soon as possible to allow for a response.

"The undersigned affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership, etc., or individual has not prepared this bid in collusion (*An agreement between two or more persons to deceive the school district or defraud the school district of its rights*) with any other **bidder**, school board member, or school district employee and that the contents of this bid as to prices, quality of product, terms and/or conditions, etc., **have not** been communicated by the undersigned nor by any other employee, agent and/or representative of the company, corporation, firm, partnership, etc., or individual to any other person engaged in this type of business prior to the official opening of this bid for the intent or purpose of collusion."

PLEASE PRINT OR TYPE

Vendor Name _____

Address _____ Zip Code _____

Telephone No. _____ Fax No. _____ Email Address _____

Bidder Name _____ Bidder _____

(Signature)

END OF DOCUMENT

SCHEDULE 3

**This information must be submitted no later than 2:00 p.m., Thursday, May 9, 2019.
Failure to comply may result in the rejection of the Contractor's proposal.**

FELONY CONVICTION NOTIFICATION

Texas Education Code, Section 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 then 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

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:

CONTRACTOR'S NAME: _____

AUTHORIZED COMPANY OFFICIAL'S, NAME

(printed): _____

DATE: _____, 20____.

- 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: _____

SCHEDULE 4

**This information must be submitted no later than 2:00 p.m., Thursday, May 9, 2019.
Failure to comply may result in the rejection of the Contractor's proposal.**

HOLD HARMLESS AGREEMENT

The Contractor shall defend, indemnify, and hold harmless, South San Antonio Independent School District and all of its trustees, officers, agents, and employees from and against all suits, actions, or claims of any character brought for or on account of any injuries or damages (including death) received or sustained by any person or property on account of, arising out of, or in connection with, any negligent act or omission of Contractor or any agent, employee, subcontractor or supplier of Contractor in the execution or performance of the Contract for South San Antonio I.S.D.

The Contractor shall also defend, indemnify and hold harmless, South San Antonio Independent School District and all of its trustees, officers, agents and employees, from and against claims by any subcontractor, supplier, laborer, materialman or mechanic for payment for work materials provided on behalf of the Contractor in the performance of the Contract and all such claimants shall look solely to Contractor and not South San Antonio Independent School District for satisfaction of such claims.

This Hold Harmless Agreement shall be binding upon the undersigned, and its successors, legal representatives, heirs and assigns.

DATED this _____ day of _____, 20____.

CONTRACTOR:

By: _____

Name: _____

Title: _____

STATE OF TEXAS δ
COUNTY OF BEXAR δ

This instrument was acknowledged before me on the _____ day of _____,
20____, by _____, _____ of _____, a
Texas _____, on behalf of said _____.

Notary Public, State of Texas

SCHEDULE 5

This Statement, fully executed, must be submitted to the Owner no later than 2:00pm on Thursday, May 9, 2019. Failure to comply may result in the rejection of the Contractors Proposal.

FINANCIAL STATEMENT (BY OFFEROR)

SCHEDULE 6

This information, fully executed, must be submitted to the Owner no later than 2:00pm on Thursday, May 9, 2019. Failure to comply may result in the rejection of the Contractors Proposal.

SPECIMEN FORM OF INSURANCE CERTIFICATE

SCHEDULE 7

This document, fully executed, must be submitted to the Owner no later than 2:00 p.m. on Thursday, May 9, 2019. Failure to comply may result in the rejection of the Contractors Proposal.

PROPOSAL SECURITY

DOCUMENT 00 72 00

GENERAL CONDITIONS

The General Conditions for this contract shall be the GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, AIA Document A201 dated 2007, which is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein. A complete copy may be reviewed at the South San Antonio Independent School District's Office, 5622 Ray Ellison Blvd, San Antonio, TX 78242.

END OF DOCUMENT

DRAFT AIA[®] Document A201[™] - 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

<< >>

THE OWNER:

(Name, legal status and address)

<< >>< >>

<< >>

THE ARCHITECT:

(Name, legal status and address)

<< >>< >>

<< >>

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- 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.

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

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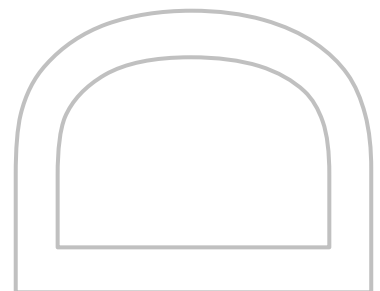
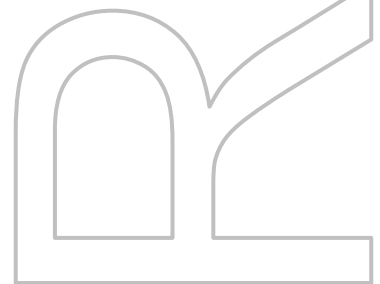
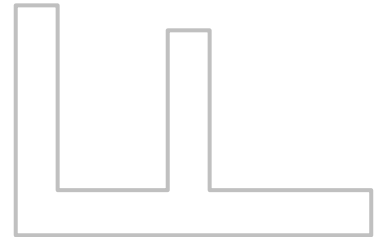
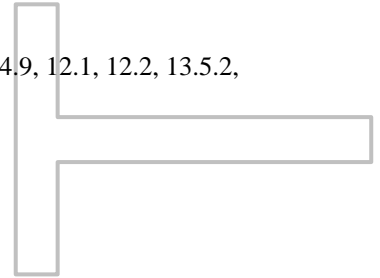
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ARTICLE 1 GENERAL PROVISIONS

§ 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 Agreement, Conditions of the Contract (General, Supplementary and other Conditions), 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 requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (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.

§ 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 and certify termination of the Agreement under Section 14.2.2.

§ 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.

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this 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 material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 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 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor 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. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

§ 2.2.3 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 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.

§ 2.2.4 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.

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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 obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 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 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report 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.

§ 3.2.3 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 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 make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, 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.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required 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.

§ 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.

§ 3.4 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.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 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.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

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. 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, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

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.

§ 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 knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, 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 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 21 days after first observance of the conditions. 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 an equitable adjustment 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 in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 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.

§ 3.8 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 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.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 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.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply 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.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be 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, 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.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be 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 the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. 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.

§ 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the 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 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. 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 a properly 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, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 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, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. 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 Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 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 which would otherwise exist as to a party or person described in this Section 3.18.

§ 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 workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall 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.

§ 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 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that 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 and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 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, 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, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. 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.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 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. 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 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize 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. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 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. 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 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 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 or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 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 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 previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 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 in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, 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 such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The 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.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and 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.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, 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, and the Contractor shall proceed promptly, 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 a written instrument prepared by the Architect 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.

§ 7.3 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 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction 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.

§ 7.3.6 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.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and 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 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, 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 related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 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. 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, 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 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, such agreement shall be effective immediately and 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 has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 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.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten 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. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 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 material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which 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, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 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 for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 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 material or equipment suppliers 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 Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, 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.

§ 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 material and equipment 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 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, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 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 and 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, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 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 binding dispute resolution, 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. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 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.

§ 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 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 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, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 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 such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect 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.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, 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 terms and conditions of 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.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits 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 evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by 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. If such lien 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 such lien, including all costs and reasonable attorneys' fees.

§ 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 and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the 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; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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 and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable 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 erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner 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.

§ 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, written notice of such 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 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. 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 report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the 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 such material or substance or who are to perform the task of removal or safe containment of such 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 in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 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.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for 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 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.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance 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.

§ 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 indemnify the Contractor for all cost and expense thereby incurred.

§ 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.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction

of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 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 LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 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.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance 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 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor 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 2.4.

§ 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, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the 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.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 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 such 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 such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 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 there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect 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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the 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 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 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.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may 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.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, 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 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

- .3 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 on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 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' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has 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 additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 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;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .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.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 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.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question 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.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written 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 must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein 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.

§ 15.1.5.2 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 for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. 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 arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party 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 days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 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 an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, 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 15.1.6 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 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. 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 Either party, at its sole discretion, 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 Either party, at its sole discretion, 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 the Owner and Contractor under this Agreement.



OWNER'S SUPPLEMENTARY CONDITIONS TO THE GENERAL CONDITIONS

The following provisions amend, supplement and/or replace the "General Conditions of the Contract for Construction," AIA Document A201-2007, and control such provisions to the extent of any conflict. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect. References to Contractor shall also be deemed to refer to the Construction Manager named in the *Standard Form of Agreement Between Owner and Construction Manager Where the Construction Manager is Also the Constructor*, AIA Document A121/CMc - 2003.

ARTICLE 1, GENERAL PROVISIONS

1.1.1 Add the following at the end of Section 1.1.1:

The Contract Documents executed or identified in accordance with Section 1.5.1 shall prevail in case of an inconsistency with sequent versions made through manipulatable electronic operations involving computers. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

The Pre-Construction Conference Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor shall be a part of the Contract Documents. Any reference in the Specifications to codes, standard specifications, or manufacturer's instructions shall mean the latest printed edition of each in effect on the date that Contractor last submitted its bid or proposal for the Work, unless the date of the item is specifically noted.

1.1.2 Delete the third sentence and add:

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

1.1.3 Add the following to the end of the first sentence:

“ . . ., including the transportation of materials and supplies to or from the site, competent supervision of the Work and the provision of insurance and payment and performance bonds in accordance with the Contract Documents.”

1.1.9* Add new Section 1.1.9 as follows:

The terms “Bids” or “Bidding” shall include any kind of competitive purchasing under the Texas Education Code Chapter 44.

1.1.10 Add new Section 1.1.10 as follows:

MISCELLANEOUS OTHER WORDS

1.1.10.1 BUSINESS DAY

The term “business day” is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or special events.

1.1.10.2 Add new Section 1.1.13.2 as follows:

CALENDAR DAY

A calendar day is a day on the Gregorian Calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

1.1.10.3 Add new Section 1.1.13.3 as follows:

HOLIDAYS

Owner –approved holidays for Contractor’s Work are limited to New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.1.10.4 Add new Section 1.1.13.4 as follows:

WORK DAY

“Work days” include all calendar days except Holidays, Saturdays and Sundays.

1.1.10.5 Add new Section 1.1.10.5 as follows:

PROVIDE

“Provide shall mean to furnish, install and complete in place and ready for operation or use.”

1.2.1.1 Add new Section 1.2.1.1 as follows:

During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirements, unless he shall have obtained an interpretation in writing from the Architect as to what shall govern before the submission of his Proposal. 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 Owner, and the Architect’s interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

1.2.3 Delete Section 1.2.3 in its entirety and replace with the following:

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

1.2.4 Add new Section 1.2.4, as follows:

Precedence of the Contract Documents.

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

- .1 Contract Modifications signed by Contractor and Owner.
- .2 Addenda, with those of later date having precedence over those of earlier date.
- .3 Supplementary Conditions.
- .4 General Conditions - AIA A201-2007.
- .5 Specifications
- .6 Drawings.
- .7 Agreement – AIA A101-2007
- .8 Bid or Proposal Documents, including Contractor’s Bid or Proposal Form.

1.2.5 Add new Section 1.2.5, as follows:

Relation of Specifications and Drawings:

To be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of work indicated. In the event of the

above mentioned disagreements, the resolution shall be determined by the Architect.

1.2.6 Add new Section 1.2.6, as follows:

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

1.2.7 Add new Section 1.2.7 as follows:

When the work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

1.2.8 Add new Section 1.2.8 as follows:

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

2.1.1 Delete Section 2.1.1 in its entirety and replace with following:

The Owner is the Board of Trustees of the School District, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner.

2.1.2 Delete Section 2.1.2 in its entirety and replace with following:

The Contractor acknowledges that no lien rights exist with respect to public property. It shall be further understood that this Contract is not written for the benefit of third parties.

2.2.1 Delete Section 2.2.1 in its entirety and replace with the following:

The Owner, being a public body under the laws of the State of Texas, must have funds in the full amount of the contract on hand prior to award and execution of the Contract Documents.

2.2.3 Delete last sentence of Section 2.2.3 in its entirety.

2.2.4 Delete Section 2.2.4 in its entirety and replace with following:

Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

2.2.5 Delete Section 2.2.5 in its entirety and replace with the following:

The Contractor will be furnished, free of charge, twenty (20) copies of the Instruments of Service for the purpose of making reproductions pursuant to Section 1.5.2. The Contractor shall furnish, at any additional copies, its sole cost and expense. The Contractor is responsible for ordering, receiving, paying for additional reproductions as needed including shipping and handling.

2.2.6 Add new Section 2.2.6, as follows:

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

2.3 Delete Section 2.3 in its entirety and replace with the following:

If the Contractor fails to correct non conforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the 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 any 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 right under Section 12.2.

2.4 Revise Section 2.4 as follows:

- .1 Replace phrase "A ten-day period" with "A three-day period" throughout.
- .2 Delete fourth sentence in its entirety.

3.1.1 Revise Section 3.1.1 by adding the following language before the final period in the fourth sentence: "and includes the Construction Manager, if applicable."

3.1.2 Delete Section 3.1.2 in its entirety and replace with following:

The Contractor shall perform the Work in a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

3.1.3 Revise Section 3.1.3 by deleting the word "either" and adding the following language before "or by tests".

“, activities of Owner (or Construction Manager, if applicable) conducted in accordance with the Contract Documents,”.

3.2.2 Delete last sentence of Section 3.2.2 in its entirety and replace with following:

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

Add the following Clauses to Section 3.2.2:

.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner.

.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

3.2.4 Add new Section 3.2.4 as follows:

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 lines, cables, pipes, and pipelines identified to Contractor.

3.2.5 Add new Section 3.2.5 as follows:

The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and

become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 4.3.10.

3.2.6 Add new Section 3.2.6 as follows:

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 request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

3.2.7 Add new Section 3.2.7 as follows:

The Contractor shall use the "REQUEST FOR INFORMATION" (RFI) form provided by the Owner or another form approved by the Architect and the Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

3.3.1.1 Add new Clause 3.3.1.1 to Section 3.3.1 as follows:

.1 The Contractor shall assign a superintendent who shall make decisions in behalf of the Contractor and its contractors. He shall be on the project, in this capacity, at all times while work on the project is in progress.

3.3.4 Add new Section 3.3.4 as follows:

Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

3.3.5 Add new Section 3.3.5, as follows:

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

3.3.6 Add new Section 3.3.6, as follows:

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

3.3.7 Add new Section 3.3.7 as follows:

Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the

performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and contractors on the site, and shall take, and cause the Contractor's and its contractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury. No work shall be permitted on testing days of state mandated testing for assessment of student skills. The Contractor may work after normal business hours; however, the Contractor shall compensate the District at the rate of \$60.00 per hour for work performed after the normal hours of custodian staff.

3.3.8 Add Section 3.3.8 as follows:

Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

3.3.9 Add Section 3.3.9 as follows:

The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

3.3.10 Add Section 3.3.10 as follows:

In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on scheduled. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by contractor. In the event Contractor determines that the Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph 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 Scheduled Completion Date.

3.4.1.1 Add new Section 3.4.1.1 as follows:

Prevailing Wages. Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor and

upon any contractor under him to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

3.4.1.2 Add new Section 3.4.1.2 as follows:

In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the project specifications, and not less than this established scale must be paid on the project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

3.4.1.3 Add new Section 3.4.1.3 as follows:

A Contractor or contractor who violates the provisions of Supplementary Conditions 3.4.1.1. or

3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

3.4.2 Delete Section 3.4.2 in its entirety and replace with the following:

Substitutions will not be accepted unless approved through the procedures set forth in Specification Section 01 30 00 - Administrative Requirements. The Owner shall be entitled to deduct from the Contract Sum, regardless of acceptance or rejection, amounts paid to the Architect to evaluate the Contractor's proposed substitutions. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to make agreed upon changes in the Drawings and Specifications made necessary by the Owner's acceptance of such substitutions.

3.4.3 Add following sentences to Section 3.4.3:

The Contractor shall be responsible for the actions of Contractor=s forces, contractor=s forces and all tiers of subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor=s forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

3.4.4 Add new Section 3.4.4 as follows:

The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.5.1 Add new Section 3.5.1 as follows:

The Contractor agrees to assign to the Owner at the Time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

3.5.2 Add new Section 3.5.2 as follows:

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

3.5.3 Add new Section 3.5.3 as follows:

The warranty provided in Section 3.5.2 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

3.5.4 Add new Section 3.5.4 as follows:

The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

3.5.5 Add new Section 3.5.5 as follows:

Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of substantial Completion, dates upon which the one year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one month prior to the expiration of the one year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one-year warranty period at least one month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

3.5.6 Add new Section 3.5.6 as follows:

Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. This date shall be the Date of substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial substantial Completion approved by the parties, except for work to be completed or corrected after the date of substantial Completion and prior to final payment. Warranties for work to be completed or corrected after the date of substantial Completion and prior to final payment shall become effective on the later of the date the work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

3.6 Delete Section 3.6 in its entirety and replace with following:

The Contractor will not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to

establish the Owner's exemption from such taxes.

3.7.1 Add the following to the end of Section 3.7.1:

The Owner shall pay fees for public or private water, gas, electrical, and other utility extensions at the site. The Contractor shall secure and arrange for all necessary utility connections.

3.7.2 Delete Section 3.7.2 in its entirety and replace with the following:

In performing its obligations hereunder, the Contractor shall comply fully with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the Owner of such compliance.

3.7.2.1 Add new Section 3.7.2.1 as follows:

Without limiting the generality of the foregoing, the Contractor shall comply with all requirements of V.T.C.A., Government Code §2258.001 et seq., and the rules and regulations promulgated thereunder. The Contractor shall pay and cause all of its Subcontractors to pay not less than the general prevailing rate of per diem wages and the prevailing rate for legal holidays and overtime work in the locality of the Work for each type of workman needed to execute the Work. The Owner has ascertained such general prevailing rate of per diem wages and the prevailing rate for legal holidays and overtime work in the locality of the Work for each type of workman needed to execute the Work, and has set forth the same in the Contract Documents. The Contractor shall keep or cause to be kept, and shall cause each of its Subcontractors to keep or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed in connection with the Project, and showing also the actual per diem wages paid to each of such workers, which records shall be open at all reasonable hours to the inspection of the Owner, its officers or agents. The Contractor shall cause each of its Subcontractors to submit to the Contractor, with each request for payment, certified copies of such records. At the request of the Owner, the Contractor will provide the Owner with certified copies of its records of per diem wage paid to its employees, together with copies of its Subcontractor's records. The Contractor shall forfeit to the Owner the statutory penalty provided for each laborer, workman or mechanic employed, for each calendar day or portion thereof that such laborer, workman or mechanic is paid less than the stipulated prevailing rates for any Work performed by the Contractor or any Subcontractor. In addition, the Contractor shall be responsible to pay the Owner, upon Owner's written demand, the sum of \$60.00 per diem for each day during which a violation of this paragraph occurs.

3.7.3 Add the following at the end of Section 3.7.3:

The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from, arising out of such work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such work.

3.7.4 Delete Section 3.7.4 and replace with the following:

Claims for Concealed or Unknown Conditions. Contractor acknowledges that there may exist at the project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "surface Conditions"). Owner makes no representations or warranties regarding surface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be

responsible for inspecting the site and determining the existence or likelihood of any surface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all work associated with or attributable to surface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of surface Conditions. Except as provided above with respect to surface conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than 3 days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

3.7.5. Delete the following from fourth (and last) sentence of Section 3.7.5: "and Contract Time".

3.7.6 Add new Section 3.7.6 as follows:

The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

3.8.3 Delete Section 3.8.3 and replace with following:

Materials and equipment under an allowance shall be selected by the Owner within reasonable time as is requested by the Contractor as necessary to avoid delay in the Work. The Contractor shall notify the Owner of the requested receipt date, allowing the Owner adequate time to make selections.

3.8.4 Add Section 3.8.4 as follows:

When performing Work under allowances, Contractor shall solicit and receive not fewer than three written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the lowest responsible, complete and most satisfactory proposal meeting the design intent, as determined by the Architect.

3.9.1 Add following sentence to Section 3.9.1:

The Contractor shall not replace the Project Manager or Superintendent prior to final completion of the Work unless (1) the Project Manager or Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to final completion of the Work. From substantial completion to final completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within 30 days of substantial completion.

3.9.2 Delete Section 3.9.2 in its entirety and replace with the following:

The Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, contractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

3.9.2.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, contractor or subcontractor involved in the project.

3.9.2.2 Contractor shall provide an adequate staff for the proper coordination and expedition of the work. Owner reserves the right to require Contractor to dismiss from the work any employee or employees that Owner may deem incompetent, careless, inordinate, or in violation of any provision in these Contract Documents. This provision is applicable to contractors, subcontractors and their employees.

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

3.9.3 Delete Section 3.9.3 and replace with the following:

Owner and Architect 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 and Architect shall be notified at the beginning of that day. Owner and Architect 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, the Contractor is subject to being backcharged in the amount of \$250 for each day.

3.10.1 Add the at the end of Section 3.10.1:

The construction schedule format and content shall be as approved by the Owner and Architect.

3.10.2 Delete the following from the fourth (and last) sentence of Section 3.10.2: "increase in Contract Sum or".

3.10.4 Add new Section 3.10.4 as follows:

The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

3.11.1 Add new Section 3.11.1 as follows:

Contractor shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents, within five (5) working days of request by Owner, Architect, or their respective agents.

3.12.11 Add new Section 3.12.11 as follows:

The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

3.13 Add the following at the end of Section 3.13:

The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

3.15.1 Delete Section 3.15.1 in its entirety and replace with the following:

The Contractor shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract and shall, not less than two times each week, clean up by removing rubbish, including old and surplus materials. At completion of the work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. The Contractor shall clean all dirt, dust, foreign matter and stains from interior and exterior surfaces.

3.15.3 Add new Section 3.15.3 as follows:

The Contractor shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

3.16.1 Add new Section 3.16.1 as follows:

Upon request of the Architect or Owner, the Contractor shall accompany the Architect of Owner on an inspection of the Work.

3.16.2 Add new Section 3.16.2 as follows:

The Contractor shall provide access to the Work for any and all Owner separately contracted testing or inspection services.

3.18.1 Delete Section 3.18.1 in its entirety and replace with the following:

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE (1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

3.18.2 Delete Section 3.18.2 in its entirety and replace with the following language:

IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A CONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

3.18.3 Add new Section 3.18.3, as follows:

CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS CONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1 IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS CONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

3.18.4 Add new Section 3.18.4 as follows:

Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives or the Architect pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

3.18.5 Add new Section 3.18.5 as follows:

THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

3.19 Add new Section 3.19, as follows:

REPRESENTATIONS AND WARRANTIES.

3.19.1 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 plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

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

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

3.20 Add new Section 3.20, as follows:

BUSINESS STANDARDS.

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

4.1.3 Delete Section 4.1.3 in its entirety and replace with the following:

If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

4.2.2.1 Add new Clause 4.2.2.1 to Section 4.2.1 as follows:

.1 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor.

4.2.6 Delete all references to "Architect" in Section 4.2.6 and replace with "Architect or Owner".

4.2.6 Add the following at the end of Section 4.2.6:

Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents.

4.2.7 Add at the end of Section 4.2.7 the following:

The Architect will review and comment 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 the design concept expressed in the Contract Documents. The Architect's action will be taken with reasonable promptness as to cause no delay in the Work or in the activities of the Owner or separate contractors, 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, or for coordination of the various trades, or for compliance with schedules, all of which remain the sole 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 its obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute consideration or approval of safety precautions or, unless otherwise stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If, on occasion, the Architect reviewed and/or commented upon items or subjects which are the responsibility of the Contractor, such action shall be interpreted as voluntary assistance by the Architect, and shall not create a duty or obligation upon the Architect to provide similar review and comment on other items or subjects.

4.2.9 Delete Section 4.2.9 in its entirety and replace with the following:

The Architect and the Owner will conduct inspections to determine the date or dates of substantial Completion and the date of final completion. The Architect will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.11 Delete first sentence of Section 4.2.11 in its entirety and replace with the following:

Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications.

4.2.13 Delete Section 4.2.13 in its entirety and replace with the following:

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

4.2.14 Add the following clause at the end of Section 4.2.14: "at no additional expense to the Owner."

5.3.1 Add new Section 5.3.1 as follows:

Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to contractors due to any non-payment to the Contractor or non-payment of contractors by the Contractor.

5.3.2 Add Section 5.3.2 as follows:

The Contractor shall require any potential contractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential contractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated contractor.

5.4.2 Delete Section 5.4.2 in its entirety and replace with the following:

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

6.1.1 Delete phrase "including those portions related to insurance and waiver of subrogation" in first sentence of Section 6.1.1.

7.1.4 Add new Section 7.1.4 as follows:

The total Contractor mark-up for overhead, profit or fee and supervision profit included in the total cost to the Owner shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, fifteen percent (15%) of the cost (0% for change orders to be paid out of any contingency allowance).

.2 For the Contractor, for the Work performed by the Contractor's contractors(Sub-contractors), five percent (5%) of the amount due the Sub-contractors (0% for the change orders to be paid out of any contingency allowance).

.3 For the Work performed by the Sub-contractor's sub-contractors(Sub-subcontractors), five percent (5%) of the amount due the Sub-subcontractors (0% for the change orders to be paid out of any contingency allowance).

.4 For each Sub-contractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, fifteen percent (15%) of the cost.

.5 In no event shall total mark-up for overhead, profit or fee and supervision in any work which involves a contractor or one or more subcontractor, regardless of who performs the work, exceed 20% of the total cost of the Change in the Work.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials, extended and totaled.

Notwithstanding the fact that the Contractor is entitled to no allowance for combined overhead and profit for Change Orders to be paid out of a contingency allowance, if and when the Owner has submitted to the Contractor fifteen (15) proposed Change Order requests for changes to be paid out of a contingency allowance, the Contractor shall thereafter be entitled to payment of a \$60.00 administrative processing charge for each Change Order request subsequently submitted by the Owner with respect to a change to be paid out of a contingency allowance.

When Change Orders are indicated to be paid from a contingency allowance, if any, identified in the Contract Documents, the Contractor's supervision and all other overhead items and profit shall be deemed to be included in the Contract Sum, and not in the contingency allowance.

7.2.2 Add new Section 7.2.2 as follows:

Acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

7.3.8 Delete the first sentence of Section 7.3.8 and replace with the following:

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

7.3.12 Add new Section 7.3.12 as follows:

When Change Orders are indicated to be paid from a contingency allowance, if any, identified in the Contract Documents, the Contractor's supervision and all other overhead items and profit shall be deemed to be included in the Contract Sum, and not in the contingency allowance.

8.1.2 Revise Section 8.1.2 as follows:

Replace "is the date established in the Agreement" with "shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement (or Amendment Number 1 if Contractor is a Construction Manager at Risk) has been

signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

8.1.3 Delete phrase "Architect" in Section 8.1.3 and replace with "Architect and Owner." Add the following at the end of the existing sentence: "The date of Final Completion is the date certified by the Architect in accordance with Section 9.8. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than 30 days after the date of substantial Completion.

8.2.4 Add Section 8.2.4 as follows:

In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

8.2.4.1 Add Section 8.2.4.1 as follows:

In the event the Contractor fails to achieve Substantial Completion of the complete contract with the adjusted contracted time, the Owner will be damaged thereby. The Contractor and Owner jointly agree that the amount of said damages is difficult if not impossible of definite ascertainment and proof. The Contractor and Owner hereby agree that the sum of **\$1,250.00** per calendar day, starting on the first day of the delay and ending on the day Substantial Completion of the entire work is declared, is a reasonable and appropriate set amount of the damages which will be incurred by the Owner for each day of delay. The Contractor recognizes this amount is liquidated damages and not a penalty of any kind.

In the event that the Contractor achieves Substantial Completion then fails to complete all punch list items satisfactorily within the prescribed period for completion of the punch list, the Owner may reinstate claim for liquidated damages at the rate of \$250.00 per consecutive calendar day until the punch list is complete.

The Contractor agrees that any liquidated damages due under this Contract shall be deducted from amounts due under the Contract, or if no further sums are due the Contractor hereunder, Contractor agrees to pay to the Owner such liquidated damages as shall be due hereunder for such delay within ten (10) days after receipt of demand thereof. Contractor further agrees that if it fails to pay the Owner such liquidated damages within ten (10) days following the Owner's demand thereof, the Contractor shall be liable to the Owner for interest at the statutory rate on said sum, plus any related costs of collection, including attorney's fees.

8.3.1 Delete Section 8.3.1, 8.3.2 and 8.3.3 in their entirety and replace with the following Sections 8.3.1 through 8.3.7:

8.3.1 Claims for extension of time must be made in writing on or before the due date of Contractor's Application for Payment covering the period in which the delay began. In the case of a continuing cause of delay, only one claim is necessary.

8.3.2 Claims for extension of time shall be stated in whole or half calendar days, as applicable. The actual date on which the delay(s) occurred must be stated in the claim.

8.3.3 In case of claims for extension of time because of unusual inclement weather, such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unless the Contractor otherwise informs the Owner in writing prior to commencement of the Work, "normal working days" will be Mondays through Fridays, exclusive of legal holidays. Unusual inclement weather as used herein means unusually severe weather

which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction.

8.3.4 Any claim for extension of time for strikes or lockouts shall be supported by a statement of facts concerning the strike, including the dates, the craft concerned, the reason for the strike, efforts to resolve the dispute, and the efforts of the Contractor to minimize the impact of the strike upon progress of the Work.

8.3.5 Any claim for extension of time for delays in transportation shall be supported by a statement of facts demonstrating that the delays are beyond the Contractor's control, and reciting the Contractor's efforts to overcome such delays.

8.3.6 The Owner, except as provided for in Section 8.3, shall not be liable to the Contractor for delay to the Contractor's work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such Owner-caused delays.

8.3.7 This Agreement does not permit the recovery of damages by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

9.1 Add the following at the end of Section 9.1:

All costs of overtime work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract. Further, in the event that the Project is a Construction Manager at Risk Project, then any use of the term "Contract Sum" in the contract documents shall be interpreted to mean "Guaranteed Maximum Price."

9.3.1 Delete the following from Section 9.3.1:

"if provided for in the Contract Documents" at the end of this Section.

9.3.1 Add the following at the end of Section 9.3.1:

The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703, Continuation Sheet.

9.3.1.1 Section 9.3.1.1 shall be replaced in its entirety with the following language:

Contractor agrees that, for purposes of Texas Government Code Section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

9.3.1.3 Add new Section 9.3.1.3 as follows:

Along with the Application for Payment, and as a condition to the payment of any amounts stated therein, the Contractor will submit the following:

- .1 An Affidavit certifying that payment has been made to all Subcontractors, Sub-subcontractors, suppliers, employees, materialmen and other persons relating to Work for which the Contractor has been paid; and
- .2 A revised and updated Construction Schedule reflecting actual job progress to the date of the Application for Payment, taking into account all factors known at the time of such Application for Payment.
- .3 Payment shall be made on the percentage of value of the Work actually performed and included in the Application for Payment, as specified in Article 5 of the Agreement.

9.3.1.4 Add new Section 9.3.1.4 as follows:

Until Final Completion of the Work, the Owner shall withhold retainage as provided in the Contract Documents, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein.

9.3.3 Add the following new sentence at the end of Section 9.3.3:

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

9.3.4 Add new Section 9.3.4 as follows:

In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

9.5.1.6 Add the following to the end of Section 9.5.1.6:

The progress of construction must not lag behind the construction progress schedule approved by the Owner. If the construction or any portion or phase thereof falls behind the schedule approved by the Owner, further payment may be withheld until the pace of construction is accelerated to the satisfaction of the Owner to meet the scheduled Contract Time.

9.5.1.8 Add the following new Clauses 9.5.1.8, 9.5.1.9, 9.5.1.10, and 9.5.1.11 to Section 9.5.1 as follows:

- .8 delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the mission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of contractors and insurance requirements;
- .9 evidence of financial inability to perform the Contract fully;
- .10 failure to submit record documents required by the Contract; or
- .11 failure of the Contractor to perform any other obligations of the Contract.

9.5.2 Add to the end of Section 9.5.2 the following:

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

9.6.1 Revise Section 9.6.1 as follows:

Add: "for undisputed amounts" in the first line of the first sentence after "payment". Add the end of the existing Section: "Owner shall notify Contractor within 21 days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code section 2251.042 *et. seq.*, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents or Construction Documents."

9.6.2 Delete Section 9.6.2 in its entirety and replace with the following:

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 construction, furnished and equipping of the improvements and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its contractors as are applicable to the contractor hereunder, and if the Owner so requests, shall provide copies of such contractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's contractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

9.6.7 Delete Section 9.6.7 in its entirety and replace with the following:

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

9.7 Delete phrase "or awarded by binding dispute resolution" in Section 9.7.

9.8.1 Add the following to Section 9.8.1:

In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until substantial completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

9.8.3 Delete "Architect" in Section 9.8.3 and replace with "Architect and Owner."

9.8.3 Add new Clause 9.8.3.1 and 9.8.3.2 to Section 9.8.3 as follows:

.1 If, in Architect's opinion during the inspection, the Project or the designated portion thereof which Owner has agreed to accept separately is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Owner-Architect Agreement.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

9.8.4 Delete "Architect" in Section 9.8.4 and replace with "Architect and Owner."

9.8.5 Delete the second and third sentences of Section 9.8.5 in their entirety.

9.8.6 Add new Section 9.8.6 as follows:

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

The Owner shall be entitled to retain a reasonable sum in an amount up to \$50,000.00 from final payment of remaining retainage until the Contractor delivers to the Owner all as-built drawings, record documents and maintenance manuals required by the Contract Documents; this is in addition to amounts retained for Work that is incomplete or not in accordance with the Contract Documents.

9.9.3 Delete Section 9.9.3 in its entirety and replace with the following:

Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10.1 Delete Section 9.10.1 in its entirety and replace with the following:

When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

9.10.2 Delete the Section 9.10.2 in its entirety and replace with the following:

The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all contractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

9.10.4 Delete Section 9.10.4 in its entirety and replace with the following:

The Owner shall make final payment of all sums due the Contractor not more than thirty (30) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of any claims by the Owner.

9.10.6 Add new Section 9.10.6, as follows:

The Contractor shall not permit any actual or purported lien, charge or claim to attach or attempt to attach to the Work, the site or any amounts due or to become due to the Contractor under the Contract Documents. If any such lien, charge or claim is so asserted, the Contractor shall promptly procure its release and indemnify the Owner against all damage and expense incident thereto. Upon completion of the Work and before any final payment and settlement, the Contractor shall provide evidence satisfactory to the Owner of payment and release of all debts, taxes, liens, charges, obligations and claims for or relating to labor, materials, Subcontractors and Sub-

subcontractors; provided, however, that if the Contractor has not paid for any of the aforesaid as a result of a bona fide dispute, and payment of such is guaranteed and covered by the payment bond provided by the Contractor, then the Contractor shall not be required to pay such claim as a condition to final payment and settlement, but instead shall be required to provide Owner with written consent to final payment executed by such surety, expressly acknowledging the existence of such unpaid claim, and agreeing that full and final payment to the Contractor shall not impair any of the Owner's rights or the surety's obligations under the bond.

9.11 Add new Section 9.11, as follows:

AUDIT.

9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

9.12 Add new Section 9.12 as follows:

In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than 1 inspection for substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within sixty days after the date established for substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

10.1.1 Add new Section 10.1.1 as follows:

Contractor's employees, agents, and contractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and contractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and contractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work. Contractor has adopted or will adopt its own policy to assure a drug and alcohol free work place while performing the Work. Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test. Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

10.2.1 Revise Section 10.2.1 as follows:

.1 Add: "school personnel, students, and other persons on Owner's premises" after "Work".

.1 Add: "including the installation of fencing between the Work site and the occupied portion of a

connecting or adjacent educational facility”.

.3 Add: “other buildings, fencing,” before “trees”.

.3 Add: “athletic fields, facilities and tracks,” after “walks”.

10.2.3 Add the following to Section 10.2.3:

At the end of existing Section, add: “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 fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.”

10.2.4 Revise Section 10.2.4 as follows:

Delete “explosive or other” in the first sentence. At the end of the existing Section, delete the period and add: “, 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 Delete Section 10.2.5 in its entirety and replace with the following:

CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2 EVEN IF SUCH LOSS OR DAMAGE RESULTS FROM OWNER, OWNER’S CONSULTANT’S, OR ARCHITECT’S NEGLIGENCE. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH DAMAGE IS CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OWNER’S CONSULTANTS OR ARCHITECT. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR’S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

10.2.8 Revise Section 10.2.8 as follows:

Delete reference to “21 days” and replace with “3 days.” Add at the end of the existing Section the following language “Provided, however Contractor understands that, under Texas law, Owner has tort immunity.”

10.3.3 Add the following to the end of Section 10.3.3:

Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

10.3.6 Delete Section 10.3.6 in its entirety.

10.4 Delete second sentence of Section 10.4.

10.4.1 Add Section 10.4.1 as follows:

The performance of the foregoing services by the Contractor shall not relieve the contractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

11.1 Section 11.1, revise to read "Contractor's Insurance".

11.1.1 Delete Section 11.1.1 in its entirety and replace with following:

The Contractor shall carry and maintain in force the insurance described below. Prior to execution of the Contract, the Contractor shall procure insurance coverage in the types and amounts as follows:

<u>Workmen's Compensation:</u> (Including Waiver of Subrogation Endorsement)	Statutory
<u>Employer's Liability:</u>	\$1,000,000.00
<u>Comprehensive General Liability:</u>	
Occurrence	\$1,000,000.00
Aggregate	\$2,000,000.00
Personal Injury (Coverage to include groups A, B, and C w/exclusion "C" aggregate removed.)	\$1,000,000.00 each person
<u>Property Damage</u>	\$1,000,000.00 each occurrence
Independent Contractors	\$2,000,000.00 aggregate
Contractual Liability	(Same limits as above)
Products and Completed Operations	(Same limits as above, for one (1) year, commencing with issuance of final Certificate for Payment)
<u>Automobile Liability:</u>	
Bodily Injury/Property Damage	\$1,000,000.00 combined single limit
Property Damage	\$1,000,000.00 each occurrence
	\$5,000,000.00 each occurrence/aggregate
<u>Umbrella or Excess Liability</u>	\$1,000,000.00 each occurrence
<u>Owner's and Contractor's Protective Liability Insurance</u>	\$1,000,000.00 aggregate

All Risk Builders Risk against the perils of fire, lightning, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, and all other perils in the amount one hundred percent (100%) of the value of the improvements including transit and materials stored off site. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery equipment up to installation, during testing, and until acceptance by Owner.

.1 The Contractor shall provide an endorsement to the Worker's Compensation policy which grants waiver of subrogation in favor of the Owner.

.2 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner's Representative will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas.

.3 The policy or policies so issued in the name of Contractor, except the Worker's Compensation policy, shall also name the Owner and subcontractors as additional insured, as their respective interests may appear. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

.4 If the insurance is written with stipulated amounts deductible under the terms of the policy, the contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner then the Contractor shall bear all reasonable costs properly attributable thereto.

11.1.2 Add the following new sentence at the end of Section 11.1.2:

Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

11.1.3 Delete Section 11.1.3 in its entirety and replace with the following:

Certificates of Insurance shall be filed with the Owner within ten (10) days after award of the Contract to Contractor and prior to commencement of the Work. The Certificates shall be ACORD Form 25, accompanied by a completed AIA Document G715, Instruction Sheet and Attachment for ACORD Certificate of Insurance. Contractor shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the

Work is in progress without thirty (30) calendar day's prior written notice to Owner. All policies shall name as insured the Owner. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 11.1.1. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of Section 11.1.5 hereof shall apply.

The provisions of this Subparagraph 11.1.3 shall apply to all policies of insurance required to be maintained by the Contractor pursuant to the Contract Documents.

11.1.4 Delete Section 11.1.4 in its entirety and replace with the following:

Contractor and its contractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its contractors are in force and the necessary certificates and statements pursuant to Section 11.1.3 hereof have been received by Owner and the Architect has issued a written notice to proceed.

11.1.5 Add new Section 11.1.5, as follows:

As an alternative and at Owner's option and expense, Owner may elect to furnish or to arrange for any part or all of the insurance required by Section 11.1 hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefore, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

11.1.6 Add new Section 11.1.6 as follows:

Contractor shall provide workers' compensation and employers' liability insurance meeting statutory limits mandated by state and federal laws.

11.1.7 Add new Section 11.1.7 as follows:

All insurance policies shall be provided by a company or companies with a rating of not less than B+ in the last available Best's Rating Guide. All such policies shall include clauses whereby each underwriter agrees to **waive its rights of subrogation** against the Owner. The Commercial General Liability, Automobile Liability and Umbrella Liability policies shall be endorsed to add the Owner as an **additional insured**. The limits of liability shown for each type of insurance coverage to be provided by the Contractor pursuant hereto shall not be deemed to constitute a limitation of the Contractor's liability for claims hereunder or otherwise. Notwithstanding anything herein to the contrary, the Owner may to the fullest extent permitted by applicable law, accept alternate or different coverages for the insurance specified herein upon receipt from a licensed insurance agent or company acceptable to Owner of a written evaluation of the proposed alternate coverage in form acceptable to Owner confirming that such alternate coverage provides comparable or greater protection to the Owner as the coverage specified.

11.1.8 Add new Section 11.1.8 as follows:

A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-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 Owner.

Persons providing services on the Project ("contractor" 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, contractors, 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 Section 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 Owner 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 Owner showing that coverage has been extended.

The Contractor shall obtain from each person providing services on a Project, and provide to the

Owner:

a. A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

b. No later than seven (7) 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 (1) year thereafter.

The Contractor shall notify the Owner 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:

a. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project;

b. 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;

c. 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;

d. Obtain from each other person with whom it contracts, and provide to the Contractor:
(1) A certificate of coverage, prior to the other person beginning work on the Project; and

(2) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

e. Retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

f. Notify the Owner 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

g. Contractually require each person with whom it contracts to perform as required by items a-f, 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 Owner 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 Commission's Division of Self-Insurance Regulation. 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 Owner 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 Owner.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to selfinsure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i)

11.1.9 Add new Section 11.1.9, as follows:

The Owner and Contractor shall waive all rights against (1) each other and the contractors, subcontractors, agents and employees each of the other, and (2) the Architect and separate Contractors, if any, and their contractors, subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work. The foregoing waiver afforded the Architect, his agents and employees shall not extend to the liability imposed by Section 3.18.3. The Owner or the Contractor, as appropriate, shall require of the Architect, separate contractors, contractors and subcontractors by appropriate agreements, written where legally required for validity, similar waivers, each in favor of all other parties enumerated in this Section 11.1.9.

11.1.10 Add new Section 11.1.10 as follows:

Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11.2 Delete Section 11.2 in its entirety.

11.3 Delete Section 11.3, including all parts, in its entirety.

11.4.1 Delete Section 11.4.1 in its entirety and replace with the following:

The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total combined accepted bid(s).

11.4.2 Delete Section 11.4.2 in its entirety and replace with the following:

The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total bid as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

11.4.3 Add new Section 11.4.3 as follows:

The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. 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. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, 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, 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 an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

The Sureties shall promptly file a signed copy of the Contract, Performance, and Payment Bonds with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code.

11.4.4 Add new Section 11.4.4 as follows:

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

11.4.5 Add new Section 11.4.5 as follows:

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.

11.4.6 Add new Section 11.4.6 as follows:

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

11.4.7 Add new Section 11.4.7 as follows:

Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

11.4.8 Add new Section 11.4.8 as follows:

By inclusion of this Section 11.5.7 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

12.1.2 Add new Clause 12.1.2.1 to Section 12.1.2 as follows:

.1 If a portion of the Work has been covered and the Architect has specifically requested to see such Work, or if any known deficiencies exist, or the Contract Documents specifically request inspection prior to its being covered, the Architect may request to see that Work and it shall be uncovered by the Contractor. If the work is not in accordance with the Contract Documents, it must be corrected and covered at the expense of the Contractor. If the Work is according to the Contract Documents, the cost to restore cover on the Work is at the sole expense of the Contractor.

12.2.2 Add new Clause 12.2.2.4 to Section 12.2.2 as follows:

.4 Upon request by the Owner and prior to the expiration of one year from the date of substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

12.2.6 Add new Section 12.2.6 as follows:

Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Agreement or defects in the Work.

12.2.7 Add new Section 12.2.7 as follows:

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

12.2.8 Add new Section 12.2.8 as follows:

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

12.2.9 Add new Section 12.2.9 as follows:

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

13.1 Delete Section 13.1 in its entirety and replace with the following:

The Contract shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the county where the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract shall be brought in the State courts of the county where the Project is located. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

13.2.2 Delete Section 13.2.2 in its entirety and replace with the following:

The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

13.3 Delete section 13.3 in its entirety and replace with the following:

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail return receipt requested or by courier service providing proof of delivery or by electronic facsimile transmission to the last business address known to the party giving notice.

13.5.1 Delete second sentence of Section 13.5.1 in its entirety and replace with following:

The Owner will contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services.

13.6 Delete Section 13.6 in its entirety and replace with following:

Payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Any such payment shall be deemed overdue on the thirty-first day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

13.8 Add new Section 13.8, as follows:

13.8 CONTRACTORS RECORDS.

13.8.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

13.8.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, 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.

13.8.3 If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.8.2, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating work sheets; general ledger entries detail 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.

13.8.4 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 system shall be satisfactory to the Owner and shall be subject to the provisions of

Section 13.8.2.

13.8.5 Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.8.2, 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.

13.8.6 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 overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

14.1.3 Delete Section 14.1.3 in its entirety and replace with following:

If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon 7 days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs in an amount which would have been recoverable had the termination been for the Owner's convenience.

14.2.1 Add the following to Section 14.2.1:

.5 or any contractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such contractor with the Contractor's own forces, in a timely manner, or (ii) replace the contractor with another similarly qualified contractor who is ready, willing and able to do such contractor's Work in a timely manner.

.6 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents.

14.2.2 Delete Section 14.2.2 in its entirety and replace with the following:

When any of the above reasons exist the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's Surety, if any, seven (7) Days' written notice, terminate employment of the Contractor and may, subject to any prior rights of Surety:

1. Take possession of the site and of all materials, equipment, tools, and construction equipment, and machinery thereof owned by the Contractor.
2. Accept assignment of contracts pursuant to Section 5.4.
3. Finish the Work by whatever reasonable method the Owner may deem expedient.

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the contract Documents.

.4 Exclude the Contractor from the site.

14.4.3 Delete Section 14.4.3 in its entirety and replace with following:

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

15.1.2 Delete Section 15.1.2 in its entirety and replace with the following:

Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims must be initiated by written notice to the Architect and the Owner.

15.1.5.2 Delete Section 15.1.5.2 in its entirety and replace with the following:

The Contractor shall be entitled to an extension of the contract time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site during the course of the construction project. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal work days. Unusual inclement weather as used herein means unusually severe weather, which is beyond 0.2 inches of rainfall in a twenty-four hour period. Weather condition rain days per month shall be calculated up the following information:

Jan -8 rain days	Jul -4 rain days
Feb -8 rain days	Aug -5 rain days
Mar -7 rain days	Sept -7 rain days
Apr -8 rain days	Oct -6 rain days
May -8 rain days	Nov -6 rain days
Jun -6 rain days	Dec -7 rain days

The Contractor will be eligible for additional time to the contract, if the total rain days during the total project duration exceeds the total days shown in the chart listed above and if unusually inclement weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The rain day must be measured and documented on site by an Architectural approved rain gauge or measuring devise and it's approved location on site.

The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time, along with documentation as support to the claim pursuant to this following the month during which the delays or disruptions occurred.

15.2.1 Delete Section 15.2.1 in its entirety and replace with the following:

Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

15.2.2 Delete Section 15.2.2 in its entirety and replace with the following:

The Architect will review Claims and within 7 days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

15.2.3 Delete Section 15.2.3 in its entirety and replace with the following:

Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Section 15.

15.2.4 Delete last sentence of Section 15.2.4 in its entirety.

15.2.5 Delete Section 15.2.5 in its entirety.

15.2.6 Delete Section 15.2.6 in its entirety.

15.2.6.1 Delete Section 15.2.6.1 in its entirety.

15.2.8 Delete Section 15.2.8 in its entirety and replace with the following:
Waiver of Lien. It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

15.3 Delete Section 15.3, including all sub-parts, in its entirety and replace with following:
MEDIATION.

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

15.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.

15.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

15.3.4 Venue for any mediation or lawsuit arising under this contract shall be in the county where the Project is located. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

15.3.5 Add new Section 15.3.5 as follows:
In any adjudication or claim under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party, as allowed by Texas Local Government Code section 271.159.

15.4 Delete Section 15.4 including all parts, in its entirety. Delete all references to arbitration in the General Conditions.

16.1 Add new Section 16.1 as follows:
The Contractor shall certify in writing that no materials used in the work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

16.2 Add new Section 16.2 as follows:
The Architect may appoint an employee or other person to assist him during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed work not in accordance with the Contract Documents shall not prevent the Architect from insisting that the faulty work be corrected to conform to the Contract Documents and the Contractor shall correct same.

End of Supplementary Conditions to the General Conditions

SUPPLEMENTARY CONDITIONS - ATTACHMENT "A"

LABOR AND WAGE STANDARDS

**PROVISIONS APPLICABLE TO ALL CONTRACTS
FOR PUBLIC WORK PROJECTS
FOR WHICH PREVAILING WAGE RATES
HAVE BEEN DETERMINED BY SCHOOL BOARD
IN ACCORDANCE WITH LAW**

1. Duty of Payment of Prevailing Wage Rates

The following provisions and/or notices shall be incorporated in all Contracts and subcontracts for Public Work projects performed or awarded by the South San Antonio Independent School District in which the establishment of prevailing wage rates is required under §2258.022 of the Texas Government Code, to-wit:

1. A worker is employed on a Public Work project for purposes of these provisions and notices if the worker is employed by a Contractor or subcontractor in the execution of a Contract for Public Work with the South San Antonio Independent School District, or any officer or public body of the South San Antonio Independent School District. This does not apply, however, to maintenance work.
2. The South San Antonio Independent School District requires a worker employed by it, or on behalf of it, to be paid:
 1. Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, as determined by the SSAISD Board of Trustees; and
 2. Not less than the general prevailing rate of per diem wages for legal holiday and overtime work, as determined by the SSAISD Board of Trustees.
3. A Contractor who is awarded a Contract by the South San Antonio Independent School District, or a subcontractor of the Contractor, shall pay not less than the rates determined by the SSAISD Board of Trustees as the applicable prevailing wage rate to a worker employed by it in the execution of the contract.
4. A Contractor or subcontractor who violates the above provision shall pay to the South San Antonio Independent School District the sum of \$60 for each worker employed for each calendar day or part of a day that the worker is paid less than the wage rates stipulated in the contract.
5. The applicable wage rates determined by the SSAISD Board of Trustees for applicable workers shall be displayed by the Contractor/subcontractor at the job site, in a conspicuous and permanent public place readily and routinely accessible to working men and women, for the duration of the project. In addition, the Contractor/subcontractor shall display the contents of the following statement, in English and Spanish, near the display of the wage rate determination notice to employees:

SUPPLEMENTARY CONDITIONS - ATTACHMENT "A"

Notice to Laborers/Mechanics

Both the South San Antonio Independent School District and the Contractor/subcontractor agree that you must be compensated with not less than the minimum hourly base pay and minimum hourly fringe benefit contribution in accordance with the wage rates publicly posted at this job site and as are applicable to the classification of work you perform.

Additionally, you must be paid not less than one and one-half times your basic hourly rate of pay for any hours worked over 40 hours in any seven-calendar-day work period, and for any work conducted on New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King Day, or the calendar days observed as such in any given year.

Apprentice and trainee hourly wage rates and ratios apply to trainees and apprentices recognized under approved Federal or State apprenticeship training programs registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

If you believe that your employer is not paying the posted minimum wage for the type of work you do, you must contact the South San Antonio Independent School District at the following address: Construction Offices, 5622 Ray Ellison Drive, San Antonio, Texas 78242, within 180 calendar days of your receipt of any allegedly incorrect wage or benefit check. You are requested to do this as promptly as possible so that you do not waive your potential right of recovery under the provisions of the South San Antonio Independent School District contract that governs this project.

Both the South San Antonio Independent School District and the Contractor/subcontractor agree that no laborer/mechanic who files a complaint or inquiry concerning alleged underpayment of wages or benefits shall be discharged by the employer or in any other manner be discriminated against by the employer for filing such complaint or inquiry.

6. No person employed in the construction or repair of any South San Antonio Independent School District construction project shall be induced, by any means, to give up to any Contractor/subcontractor or public official or employee any part of the hourly and/or fringe benefit compensation to which he/she is otherwise entitled.
7. A Contractor shall cause the wage and labor standard provisions to be inserted in all subcontracts relative to the Work, to bind subcontractors to the same wage and labor standards as contained in these and related provisions.
8. A worker employed on a Public Work project may be paid greater than the general prevailing rate of per diem wages as determined by the SSAISD Board of Trustees.

B. Records

9. Contractors and subcontractors shall keep a record, which shall be open at all reasonable hours to inspection by the officers and agents of the South San Antonio Independent School District, showing:
 1. The name, occupation, and social security number of each worker employed by the Contractor or subcontractor in the construction of the Public Work; and
 2. The actual per diem wages paid to each worker.

SUPPLEMENTARY CONDITIONS - ATTACHMENT "A"

10. Appropriate biweekly compliance statements and payroll records shall be submitted to the South San Antonio Independent School District by the Contractors/subcontractors so that compliance with the wage and labor standard provisions of law may be reviewed.
 11. A Contractor is entitled to rely on a certified payroll report of a subcontractor regarding the payment of all sums due to those working for the subcontractor until the contrary has been determined.
 12. The Contractor and each subcontractor shall prepare payroll records in accordance with instruction furnished by the South San Antonio Independent School District. Such records shall be submitted biweekly, but no later than seven working days following completion of the Work week being processed. These records shall include certified copies of all payrolls of the Contractor and subcontractor. The Contractor shall be responsible for the submission and general mathematical accuracy of payroll from all subcontractors. Each such payroll submittal shall be on forms approved by the South San Antonio Independent School District. The records shall be sent to the following South San Antonio Independent School District location: Construction Office, 5622 Ray Ellison Drive, San Antonio, Texas 78224.
 13. Copies of payroll submittals and basic supporting payroll records of the Contractors/subcontractors accounting for all laborers/mechanics employed under the Work covered by the Contract shall be maintained by the Architect on behalf of the District during the course of the Work and preserved for a period of three years after completion of the project.
3. Enforcement
- Complaints
14. The SSAISD Board of Trustees and its agents and/or officers shall:
 1. Take cognizance of complaints of all violations of these provisions and notices committed in the execution of the Contract; and
 2. Withhold money forfeited or required to be withheld under these provisions and notices from the payments to the contractor under the contract, except that the South San Antonio Independent School District may not withhold money from other than the final payment without a determination by the SSAISD Board of Trustees that there is good cause to believe that the Contractor has violated these provisions and notices.
 15. Employees of Contractors/subcontractors may be periodically randomly interviewed, as may be required by the South San Antonio Independent School District, for purposes of investigating compliance complaints.
 16. The Contractor/subcontractor shall allow job site entry of South San Antonio Independent School District personnel at all times (after presenting proper identification to the job site superintendent or representative). The Contractor/subcontractor shall allow project employees to be separately and confidentially interviewed at random for a reasonable duration of time by the South San Antonio Independent School District representative(s) to facilitate compliance determinations regarding adherence by the Contractor/subcontractor to the wage and labor standards established by the SSAISD School Board.

SUPPLEMENTARY CONDITIONS - ATTACHMENT "A"

17. On receipt of information, including a complaint by a worker, concerning an alleged violation of these provisions and notices by a Contractor or subcontractor, the SSAISD Board of Trustees shall make an initial determination as to whether good cause exists to believe that the violation occurred.
18. Claims and disputes not promptly and routinely settled by the Contractor/subcontractor and worker pertaining to wage rates, or to job classifications of labor employed upon the Work covered by these provisions, shall be reported by the worker within 180 calendar days of the worker's receipt of any allegedly incorrect classification, wage, or benefit. Workers shall report any such irregularities to the South San Antonio Independent School District for investigation. Claims and disputes reported by the worker to the South San Antonio Independent School District within the specified time period may be considered by the SSAISD Board of Trustees; however, the decision of the SSAISD Board of Trustees shall be final. The South San Antonio Independent School District may pursue contractual rights it may have against the Contractor/subcontractor for breach of Contract and other sanctions available to enforce the labor and wage provisions.
19. The SSAISD Board of Trustees shall make its determination regarding a complaint before the 31st day after the date the SSAISD Board of Trustees receives the information.
20. The SSAISD Board of Trustees shall notify, in writing, the Contractor or subcontractor, and any affected worker, of its initial determination.
21. The SSAISD Board of Trustees shall retain any amount due under the Contract pending a final determination of the alleged violation.
- **Arbitration**
22. An issue relating to an alleged violation of the provisions and notices herein, including a penalty owed to the South San Antonio Independent School District or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224, et seq., Revised Statutes) if the Contractor or subcontractor and any affected worker do not resolve the issue by agreement before the 15th day after the date the SSAISD Board of Trustees makes its initial determination as to whether good cause exists to believe that a violation has occurred. If the persons required to arbitrate under this provisions do not agree on an arbitrator before the 11th day after the date that arbitration is required above, a District Court shall appoint an arbitrator on the petition of any of the parties; except, however, the SSAISD Board of Trustees shall not be a party in the arbitration.
23. If an arbitrator determines that a prevailing wage rate requirement has been violated hereunder, the arbitrator shall assess and award against the Contractor or subcontractor the following penalties and/or amounts:
 1. Penalties as provided by section §2258.023 of the Texas Government Code, previously set out in Paragraph 4 herein; and
 2. All amounts owed to the affected worker.

SUPPLEMENTARY CONDITIONS - ATTACHMENT "A"

24. An arbitrator shall assess and award all reasonable costs, including the arbitrator's fee, against the party who does not prevail. Costs may be assessed against the worker only if the arbitrator finds that the claim is frivolous. If the arbitrator does not find that the claim is frivolous and does not make an award to the worker, costs shall be shared equally by the parties; except, however, the SSAISD Board of Trustees shall not be considered a party in the arbitration.
25. A decision and award of the arbitrator is final and binding on all parties and may be enforced in any Court of competent jurisdiction.
- **Payment by SSAISD to Worker; Action to Recover Payment**
26. The SSAISD Board of Trustees shall use any amounts retained by it under these provisions and notices to pay the worker the difference between the amount the worker received in wages for labor on the Public Work at the rate paid by the Contractor or subcontractor and the amount the worker would have received at the general prevailing wage rate, as provided in the arbitrator's award.
27. The SSAISD Board of Trustees may adopt rules, orders, or resolutions relating to the manner in which a reimbursement herein is made.
28. If the amounts retained by the SSAISD Board of Trustees under these provisions and notices are not sufficient for the SSAISD Board of Trustees to pay the worker the full amount owed, the worker shall have the right of action against the Contractor or subcontractor and the surety of the Contractor or subcontractor to recover the amount owed, reasonable attorney's fees, and court costs, in accordance with §2258.056 of the Texas Government Code.
- **Withholding by Contractor**
29. A Contractor may withhold from a subcontractor sufficient money to cover an amount withheld from the Contractor by the South San Antonio Independent School District because the subcontractor violated the requirement for the payment of prevailing wage rates hereunder.
30. If the Contractor has made a payment to the subcontractor, the Contractor may withhold money from any future payments owed to the subcontractor, or sue the subcontractor or the subcontractor's surety for the amount withheld from the Contractor by the SSAISD Board of Trustees because of the subcontractor's violation.
- **Criminal Offense**
31. It is a violation of State law for an officer, agent, or representative of the South San Antonio Independent School District to willingly violate or not comply with the provisions for payment of prevailing wage rates as set out in Chapter 2258 of the Texas Government Code and these provisions. A Contractor or subcontractor of a Public Work under Chapter 2258 of the Texas Government Code and these provisions also commits an offense if the person violates the record-keeping requirements as set out above and in §2258.024 of the Texas Government Code.

SUPPLEMENTARY CONDITIONS - ATTACHMENT "A"

4. Payroll and Overtime

32. All laborers/ mechanics employed to construct the Public Work as governed by these provisions and notices shall be paid, not less than weekly, the full amount of wages due (*minimum hourly base pay and minimum hourly fringe benefit contribution, if any, for all hours worked, including overtime*) for the immediate preceding pay period. Only payroll deductions as are mandated by State and/or Federal Law, and those legal deductions previously approved in writing by the worker, or as are otherwise permitted by State and/or Federal law, maybe withheld by the Contractor/subcontractor.
33. No Contractor/subcontractor contracting for any part of a non-federally-funded Public Work project which may require or involve the employment of laborers or mechanics shall require or permit any such worker in any seven-calendar-day work period to work in excess of 40 hours in such work period, unless such worker receives compensation at a rate not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of 40 hours in a seven-calendar-day work period. Fringe benefits must be paid for straight time and overtime; however, fringe benefits shall not be included when computing the overtime rate.
34. The Contractor/subcontractor may pay a minimum hourly cash equivalent of minimum hourly fringe benefits listed in the SSAISD wage determination decision in lieu of the contribution of benefits to an IRS-recognized fringe benefit plan for all hours worked, including overtime work. An employee is not allowed to receive less than the minimum hourly basic rate of pay specified in the wage determination decision by the SSAISD Board of Trustees.
35. If a laborer/mechanic is employed in the normal course and scope of his/her work on the job site on New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King Day, or the calendar days observed as such in any given year, work performed shall be paid for at no less than one and one-half times the regular minimum hourly base pay, regardless of the total number of hours the laborer/mechanic has accumulated during the pay period.

5. Missing Workers Fund

36. If the South San Antonio Independent School District determines that a worker has been underpaid or not paid in accordance with the provisions hereof, if the worker cannot be located by the Contractor or the South San Antonio Independent School District after diligent efforts to accomplish same, such unpaid or underpaid wages shall be reserved by the South San Antonio Independent School District in a special "missing workers account" established by the South San Antonio Independent School District for such employees. If, after one year from the final acceptance of the project by the District, a worker still cannot be located, in order that the South San Antonio Independent School District may make effective interim reuse of the money, such wages and any associated liquidated damages may be used to defray actual costs incurred by the South San Antonio Independent School District in attempting to locate said worker; and any remaining monies may then revert back to the South San Antonio Independent School District's original funding source for the project.

6. Worker's Compensation Insurance This following provisions are subject to amendment outlined in Document 00800, Article 11A.

SUPPLEMENTARY CONDITIONS - ATTACHMENT "A"

37. The Texas Labor Code requires workers' compensation insurance for all persons providing services on a building or construction project. The South San Antonio Independent School District requires the prime Contractor to:
1. Provide certificates of coverage for the Contractor's employees to the Purchasing Department;
 2. Provide a certificate of coverage for each person providing services on the project, prior to that person beginning Work on the project;
 3. Retain copies of the above certificates of coverage for the duration of the project, plus one year;
 4. Notify the South San Antonio Independent School District, in writing, by Certified Mail or personal delivery, within ten days after the Contractor knew or should have known of any changes that materially affect the coverage of any person providing services on the project;
 5. Provide a new certificate of coverage showing extension of coverage, before the end of the current coverage period, if the current certificate ends during the duration of the project;
 6. Obtain and provide new certificates of coverage for each person providing services on a project whose current certificate ends during the duration of the project, no later than seven days after the expiration of the current coverage; and
 7. Post a notice on each project site, in the text, form, and manner prescribed by the TWCC, 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.

Persons providing "services" on the project include all persons or entities performing all or part of the services that 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, and owner-operators. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the project. "Services" do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

7. Non-Discrimination

38. No laborers or mechanics to whom the wage, salary, or other labor standard provisions referred to herein are applicable shall be discharged or in any other manner discriminated against by the Contractor/subcontractor because such employee has filed any formal inquiry or complaint, or instituted or caused to be instituted any legal or equitable proceeding, or has testified or is about to testify in any such proceeding under or relating to the wage and labor standards applicable under the public work project.

SUPPLEMENTARY CONDITIONS - ATTACHMENT "A"8. General Provisions

39. Any person employed by the Contractor/subcontractor in the construction or repair of any District Public Work project who is proven to have knowingly and willingly falsified, concealed, or covered up, by any deceptive trick, scheme, or device, a material fact, or made any false, fictitious statement or representation, or made or used any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be permanently removed from the job site by the Contractor/subcontractor.

9. Apprentices/Helpers

40. Apprentices shall be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program listed with the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor/subcontractor by the United States Department of Labor for that craft classification. Any employee listed on a payroll at any apprentice wage rate, who is not registered with an apprenticeship program and the United States Department of Labor, shall be paid the wage rate of a journeyman for the classification of work he/she was hired to perform. The Contractor/subcontractor shall be required to furnish to the South San Antonio Independent School District a copy of the apprenticeship certification, along with the payroll record on which the employee is first listed. The wage rate to be paid apprentices shall be not less than the specified rate in the registered program for the apprentice's level of progress, expressed as the appropriate percentage of journeyman's rate contained in the applicable wage determination decision.
41. Helpers shall be permitted to work at less than the predetermined rate for the Work performed when they are employed on District Public Work projects. The allowable ratio of helpers to journeymen in any craft classification shall not be greater than the ratio permitted to a Contractor/subcontractor having a registered apprenticeship program with the United States Department of Labor for that specific craft classification. Both the South San Antonio Independent School District and the Contractor/subcontractor agree that helpers shall be paid not less than the appropriate apprenticeship percentage of journeyman's rate contained in the applicable wage determination decision by the SSAISD School Board.
42. The South San Antonio Independent School District Wage Monitor's office shall maintain an accurate list of the appropriate apprentice and helper rates for the classification of Work to be performed. Persons not employed as apprentices or helpers shall be paid at a journeyman's rate for the classification of Work they are hired to perform.
43. The above provisions concerning employment of apprentices and helpers shall not operate to exclude training programs approved by the United States Department of Labor.

SUPPLEMENTARY CONDITIONS - ATTACHMENT "A"

BUILDING CONSTRUCTION RATE: The term "building construction" includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies. Also included is the installation of utilities, machinery, and equipment within five feet of the building line – both above and below the grade level, as well as the incidental grading and paving.

BUILDING CONSTRUCTION WORK CLASSIFICATION	PREVAILING WAGE RATES		
	BASE	FRINGE BENEFITS	TOTAL
Acoustical Ceiling Installer	\$ 16.42	0	\$ 16.42
Air Conditioning Mechanic	\$ 20.16	\$ 3.43	\$ 23.59
Asbestos Worker (Abatement)	\$ 10.75	0	\$ 10.75
Bricklayer/Stone Mason	\$ 22.15	0	\$ 22.15
Bricklayer/Stone Mason Helper	\$ 11.08	0	\$ 11.08
Carpenter, Form	\$ 13.63	0	\$ 13.63
Carpenter, Trim and Finish	\$ 16.86	\$ 4.17	\$ 21.03
Carpenter, Trim and Finish Helper	\$ 10.75	\$ 4.17	\$ 14.92
Ceramic Tile Installer	\$ 13.79	\$ 2.07	\$ 15.86
Concrete Finisher	\$ 16.42	0	\$ 16.42
Drywall Installer	\$ 15.18	0	\$ 15.18
Drywall Taper	\$ 13.81	0	\$ 13.81
Electrician	\$ 20.39	\$ 3.04	\$ 23.43
Electrician Helper	\$ 15.65	0	\$ 15.65
Electronic Technician	\$ 11.00	\$ 2.64	\$ 13.64
Elevator Installer	\$ 34.90	0	\$ 34.90
Floor Layer, Resilient	\$ 14.95	0	\$ 14.95
Floor Layer, Resilient Helper	\$ 10.75	0	\$ 10.75
Floor Layer, Carpet	\$ 17.22	0	\$ 17.22
Floor Layer, Carpet Helper	\$ 10.75	0	\$ 10.75
Glazier	\$ 18.21		\$ 18.21
Ironworker, Reinforcing	\$ 10.75	\$ 3.57	\$ 14.32
Ironworker, Structural	\$ 21.30	\$ 5.95	\$ 27.25
Laborer, Skilled	\$ 11.88	0	\$ 11.88
Laborer, Unskilled	\$ 10.75	0	\$ 10.75
Lathers	\$ 15.25	0	\$ 15.25
Operator, Crane	\$ 12.95	\$ 3.30	\$ 16.25
Operator Backhoe	\$ 15.98	0	\$ 15.98
Operator, Forklift	\$ 12.50	0	\$ 12.50
Operator, Front End Loader	\$ 14.56	\$ 0.84	\$ 15.40
Painter	\$ 13.07	0	\$ 13.07
Painter Helper	\$ 10.75	0	\$ 10.75
Pipefitter	\$ 21.06	\$ 4.13	\$ 25.19
Plasterer	\$ 17.90	0	\$ 17.90
Plasterer Helper	\$ 10.75	0	\$ 10.75
Plumber	\$ 22.16	\$ 1.37	\$ 23.53
Plumber Helper	\$ 10.75	\$ 1.37	\$ 12.12
Roofer	\$ 15.98	0	\$ 15.98
Sheetmetal Worker (Duct Work)	\$ 18.96	\$ 5.51	\$ 24.47

SUPPLEMENTARY CONDITIONS - ATTACHMENT "A"

BUILDING CONSTRUCTION WORK CLASSIFICATION	PREVAILING WAGE RATES		
	BASE	FRINGE BENEFITS	TOTAL
Sheetmetal Worker (Other)	\$ 11.62	0	\$ 11.62
Sprinkler Fitter	\$ 28.18	0	\$ 28.18
Truck Driver	\$ 12.39	\$ 1.18	\$ 13.57
Welder, Certified Pipe	\$ 24.14	0	\$ 24.14
Welder, Structural	\$ 19.71	0	\$ 19.71

Rev.4/17Note: Building construction rates apply up to five feet outside the building line. All rates for work performed beyond this point shall be specified under Highway Construction.

All published rates are journeyman rates, except where helper classifications have been noted.

SITWORK, PAVING, AND UTILITY CONSTRUCTION: The term "sitework, paving, and utility construction" includes the installation of utilities, machinery, and equipment beyond five feet outside the building line – both above and below grade level, as well as incidental grading and paving.

SITWORK, PAVING, AND UTILITY CONSTRUCTION WORK CLASSIFICATION	PREVAILING WAGE RATES		
	BASE	FRINGE BENEFITS	TOTAL
Carpenter, Rough	\$ 14.90	0	\$ 14.90
Form Setter (Structures)	\$ 13.63	0	\$ 13.63
Laborer, Common	\$ 12.00	0	\$ 12.00
Laborer, Utility	\$ 10.75	0	\$ 10.75
Mechanic	\$ 15.87	\$ 2.90	\$ 18.77
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (Less than 1.5 C.Y.)	\$ 16.67	0	\$ 16.67
Motor Grader Operator, Fine Grade	\$ 13.79	0	\$ 13.79
Reinforcing Steel Setter (Structures)	\$ 13.11	0	\$ 13.11
Truck Driver, Single Axle, Light	\$ 10.75	0	\$ 10.75

Note: Building construction rates apply up to five feet outside the building line. All rates for work performed beyond this point shall be specified under Highway Construction.

All published rates are journeyman rates, except where helper classifications have been noted.

APPENDIX B

CONTRACTOR'S ASBESTOS FREE AFFIDAVIT

SCHOOL: _____

PROJECT DESCRIPTION: _____

CONTRACTOR
(COMPANY NAME): _____

The undersigned acknowledges and agrees that the South San Antonio Independent School District, in order to protect the students, staff and public in general from any unnecessary exposure to asbestos fibers, and to comply with the Asbestos Hazard Emergency Response Act, prohibits the use of asbestos containing materials in all forms in the construction and operation of their facilities.

The undersigned certifies that he/she is familiar with the materials used in the construction of and incorporated into, the Project referenced above. The undersigned further certifies that, to the best of his/her knowledge and belief, no asbestos containing materials, either friable or otherwise, were used in the process of constructing or incorporated into the construction of the Project.

Dated: _____, 20____.

CONTRACTOR:

By: _____

Name: _____

Title: _____

STATE OF TEXAS δ
 δ

COUNTY OF BEXAR δ

This instrument was acknowledged before me on the _____ day of _____,
20 _____, by _____, _____ of _____, a Texas
_____, on behalf of said _____.

Notary Public, State of Texas



South San Antonio ISD 2019-2020 Calendar



5622 Ray Ellison Blvd.
San Antonio, Texas 78242
(210) 977-7000

www.southsanisd.net

FIRST DAY OF SCHOOL: Aug. 19, 2019
LAST DAY OF SCHOOL: May 28, 2020

July						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

August						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	<19	20	21	22	23	24
25	26	27	28	29	30	31

Instructional Days: 10 Teacher Days:18

September						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Instructional Days: 20 Teacher Days:20

October						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	<22	23	24	25	26
27	28	29	30	31		

Instructional Days: 21 Teacher Days:23

November						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Instructional Days: 16 Teacher Days:16

December						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

Instructional Days: 15 Teacher Days:15

January						
S	M	T	W	T	F	S
			1	2	3	4
5	6	<7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Instructional Days: 18 Teacher Days:19

February						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

Instructional Days: 19 Teacher Days:20

March						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	<30	31				

Instructional Days: 17 Teacher Days:17

April						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Instructional Days:19 Teacher Days:19

May						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Instructional Days:18 Teacher Days:20

June						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Legend	
 	District Closed
 	New Teacher Orientation
 	Professional Learning
 	Campus Work Day
 	Teacher & Student Holiday
 	Student Assessment
 	First & Last Day of School
(Begin Semester
)	End Semester
<	Begin Nine Weeks
>	End Nine Weeks
☐	Bad Weather Makeup Day

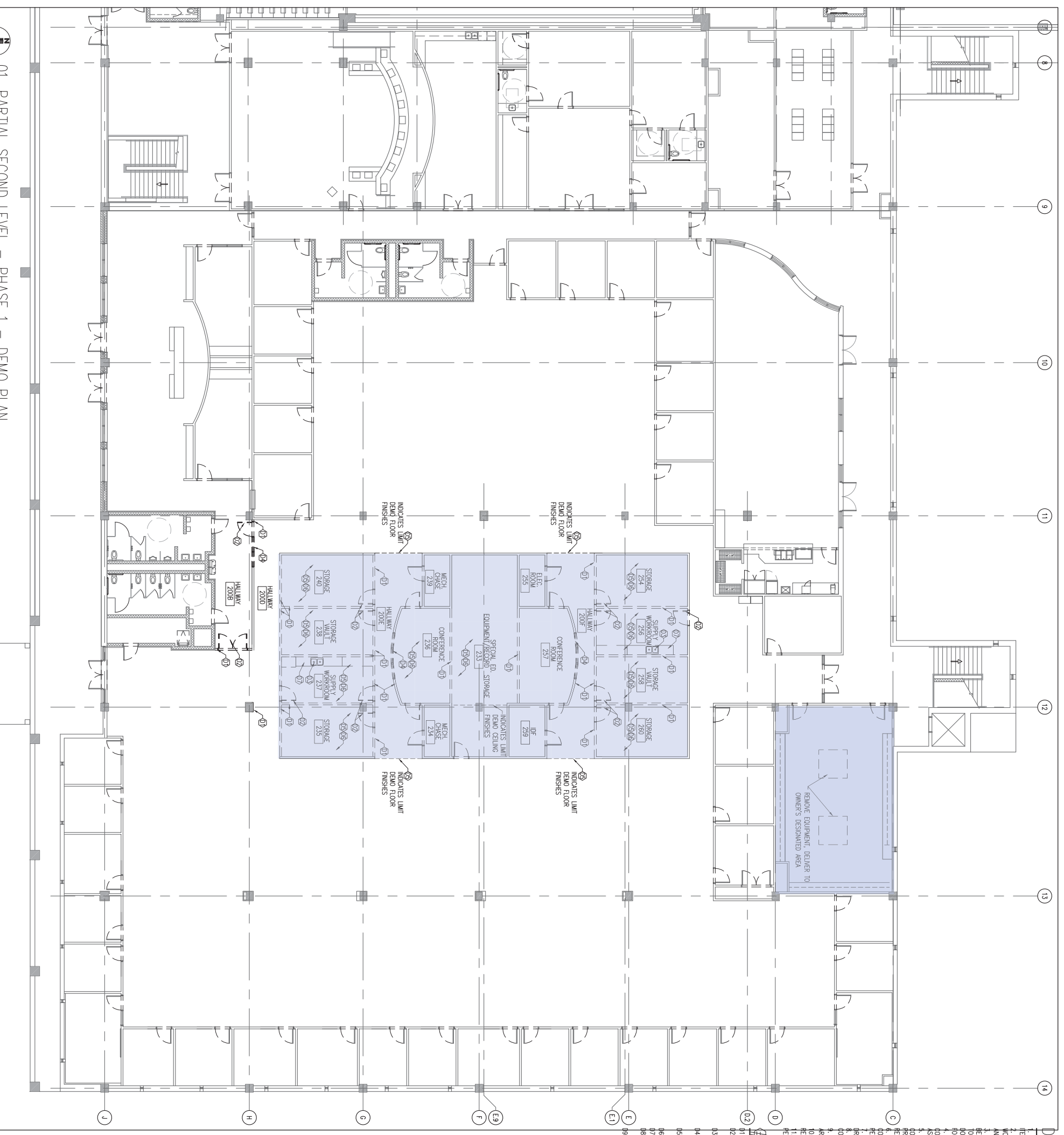
Grading Periods	
<u>9 Week Schedule</u>	
1st = 43 days	2nd = 39days
1st Semester = 82 days	
3rd = 52 days	4th = 40days
2nd Semester = 92 days	
Instructional Days = 174 Teacher Days = 187	
Total Instructional Minutes for the Year = 76,120	

Student Holidays	
July 1-5	District Offices Closed
Sept. 2	Labor Day
Oct. 7	Student Holiday & Professional Learning
Oct. 21	Student Holiday & Campus Work Day
Nov. 25-29	Thanksgiving Break
Dec. 23-Jan. 3	Winter Break
Jan. 6	Student Holiday & Campus Work Day
Jan. 20	Martin Luther King, Jr. Day
Feb. 17	Student Holiday & Professional Learning
March 9-13	Spring Break
April 10	Good Friday
April 13	Teacher & Student Holiday Bad Weather Make-Up Day
April 24	Battle of Flowers
May 25	Memorial Day
May 28	Last Day of School
May 29	Campus Work Day

Testing Dates	
December	9 - EOC English I 11 - EOC English II 9-13 - EOC Algebra I, Bio I, US His
April	7 - STAAR Grades 4&7 Writing, EOC English I STAAR Grades 5&8 Math
May	8 - STAAR Grades 5&8 Reading EOC English II 4-8 EOC Algebra I, Bio I, US His 11 - STAAR Grades 3&4 Math, Grades 6&7 Math Grades 5&8 Math (Retest)
June	12 - STAAR Grades 3&4 Reading, Grades 6&7 Reading Grades 5&8 Reading (Retest) 13 - STAAR Grade 5&8 Science 14 - STAAR Grade 8 Social Studies 22 - EOC English I 22 - 26 EOC Algebra I, Bio I, US His 23 - STAAR Grades 5&8 Math Retest 24 - STAAR Grades 5&8 Reading Retest, EOC English II



01 PARTIAL SECOND LEVEL - PHASE 1 - DEMO PLAN
SCALE: 1/8"=1'-0"

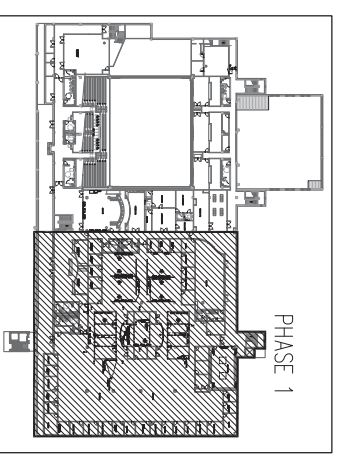


DEMOLITION PLAN GENERAL NOTES

1. THE GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR REMOVAL AND DISPOSAL OF ALL ITEMS UNDER, ABOVE, AND WITHIN THE PROJECT LIMITS, FINISHES, ETC., NOT PART OF THE WORK. ANY EXISTING MATERIALS, BUILDING WALLS, FLOORS, FINISHES, ETC., NOT PART OF THE WORK, THAT ARE DAMAGED DURING DEMOLITION OR CONSTRUCTION, SHALL BE REPAIRED AND/OR REFINISHED WITH THE SAME TYPE AND COLOR OF THE EXISTING MATERIALS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE EXISTING MATERIALS AND/OR REFINISHED WITH THE SAME TYPE AND COLOR OF THE EXISTING MATERIALS. IF THE CONTRACTOR AGREES THAT HE SHALL ASSUME SOME RESPONSIBILITY FOR THE PROTECTION OF THE EXISTING MATERIALS, HE SHALL ASSURE SOME RESPONSIBILITY FOR THE PROTECTION OF THE EXISTING MATERIALS.
3. THE CONTRACTOR SHALL VERIFY ALL PROJECT ELEVATIONS PRIOR TO THE START OF CONSTRUCTION. "MATCH EXISTING" SHALL BE UNDERSTOOD TO SIGNIFY THE SAME MATERIAL AS WELL AS THE SAME VERTICAL AND HORIZONTAL ALIGNMENT.
4. GENERAL CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND GRADE CONDITIONS (GROU NEW AND EXISTING). HE SHALL REPORT ANY DISCREPANCIES TO THE PROJECT MANAGER BEFORE PROCEEDING WITH ANY PHASE OF THE WORK AS HE WILL BE RESPONSIBLE FOR ANY DISCREPANCIES THAT ARE NOT REPORTED PRIOR TO THE START OF CONSTRUCTION. DURING THE CONSTRUCTION OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY.
5. COORDINATE ALL MECHANICAL, ELECTRICAL, AND PLUMBING DEMOLITION WITH MEP DRAWINGS.
6. COORDINATE STRUCTURAL ELEMENTS THAT ARE TO REMAIN WITH STRUCTURAL DRAWINGS.
7. COORDINATE STRUCTURAL ITEMS TO BE REMOVED WITH STRUCTURAL DEMOLITION DRAWINGS.
8. CONTRACTOR TO VERIFY WITH NEW WORK ANY AND ALL ITEMS WITHIN THE LIMITS OF WORK AREA TO BE SAUNGED, RELOCATED, AND/OR STORED PRIOR TO DISPOSAL.
9. OWNER RESERVES FIRST RIGHTS TO ALL EXISTING UTILITIES AND EQUIPMENT TO BE REMOVED.
10. OWNER RESERVES FIRST RIGHTS TO ALL EXISTING UTILITIES AND EQUIPMENT TO BE REMOVED.
11. INSTALL TEMPORARY CONSTRUCTION FENCE WITH GATES AT CONSTRUCTION AREA PERMETER COORDINATE LOCATION WITH ARCHITECT.

DEMOLITION KEYNOTES

- 021 REMOVE EXISTING NON STRUCTURAL WALLS, BASE, TRIM, AND RELATED ITEMS.
- 022 REMOVE EXISTING DOOR AND FRAME. DISPOSE OR DELIVER TO OWNERS DESIGNATED AREA IF REQUESTED.
- 023 REMOVE EXISTING PLUMBING, FINISHES, DRAINS, AND MISCELLANEOUS FIXTURES - CAP ALL PIPES. REF: MP DRAWINGS.
- 024 REMOVE EXISTING WINDOW AND FRAME. DISPOSE OR DELIVER TO OWNERS DESIGNATED AREA IF REQUESTED.
- 025 REMOVE EXISTING FLOOR FINISHES. CLEAN AND PREPARE AREA TO RECEIVE NEW FINISHES.
- 026 REMOVE EXISTING CEILING.
- 027 REMOVE ALL EXISTING MILLWORK, COUNTERTOPS & DISPLAY CASES.
- 028 REMOVE EXISTING MILLWORK, COUNTERTOPS & DISPLAY CASES.
- 029 REMOVE EXISTING MILLWORK, COUNTERTOPS & DISPLAY CASES.
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- 049 REMOVE EXISTING MILLWORK, COUNTERTOPS & DISPLAY CASES.
- 050 REMOVE EXISTING MILLWORK, COUNTERTOPS & DISPLAY CASES.



SECOND LEVEL KEY PLAN
SCALE: 1/64"=1'-0"

SD PHASE DOCUMENTS - NOT FOR CONSTRUCTION

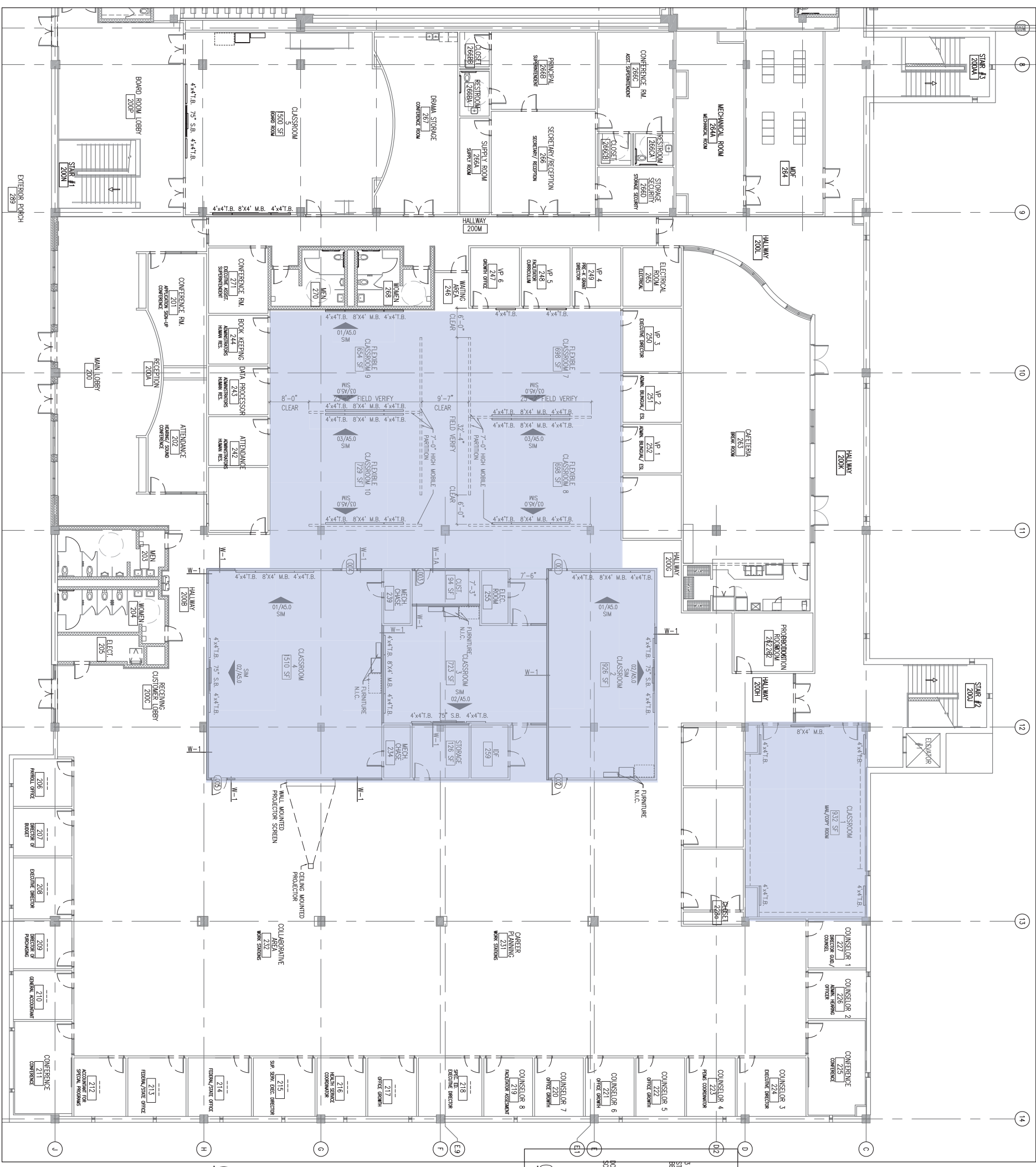
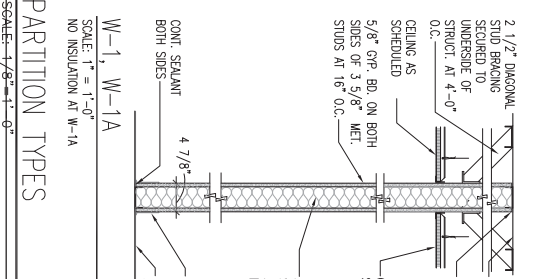
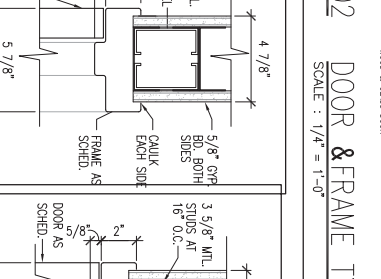
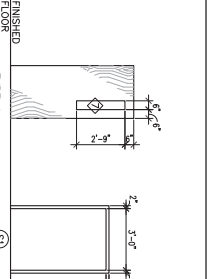
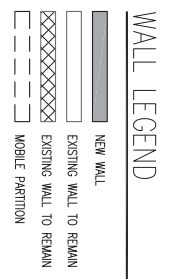
<p>GARZABORNER & ASSOC. ARCHITECTS - PLANNERS 5045 FRENCH CANYON ROAD, SUITE 100 SAN ANTONIO, TEXAS 78239 (210) 549-0900 FAX (210) 549-2820</p>	<p>DATE: AE PROJECT NO. 11-100 JAMES S. DAVIS REGISTERED ARCHITECT TX. No. 10874 NOTE: THESE DRAWINGS ARE RECORDED AND MAY NOT BE USED FOR REGULATORY APPROVAL PERMIT, OR CONSTRUCTION</p>	<p>1999 G B A</p>	<p>SOUTH SAN ANTONIO I.S.D. ADMINISTRATION AND SUPPORT CENTER RENOVATION FOR SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT</p>	<p>ARCHITECT/CONSULTANT DATE: AE PROJECT NO. 11-100 JAMES S. DAVIS REGISTERED ARCHITECT TX. No. 10874 NOTE: THESE DRAWINGS ARE RECORDED AND MAY NOT BE USED FOR REGULATORY APPROVAL PERMIT, OR CONSTRUCTION</p>	<p>© 2015 GarzaBorner & Associates, Inc. All rights reserved. This document is the property of GarzaBorner & Associates, Inc. and may not be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of GarzaBorner & Associates, Inc. The user of this document is advised that the user is responsible for the accuracy and completeness of the information contained herein. The user is advised that the user is responsible for the accuracy and completeness of the information contained herein. The user is advised that the user is responsible for the accuracy and completeness of the information contained herein.</p>
<p>DESIGNER: A.P.</p>	<p>DATE: A.P.</p>	<p>PROJECT NO: A.P.</p>	<p>SHEET NO: A1.1</p>	<p>REVISIONS:</p>	<p>SHEET TITLE: SECOND LEVEL DEMO PLAN PHASE</p>



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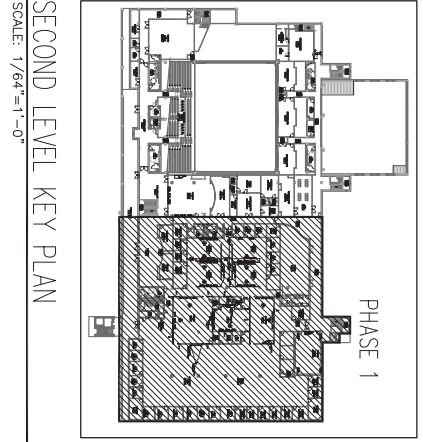
DATE: AE PROJECT NO. 11-100
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 TX. NO. 10874
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DOOR SCHEDULE

NO.	TYPE	SIZE	FINISH	FRAME	GLASS	FIXTURES	REMARKS
001	WOOD	3'-0" x 7'-0"	WOOD	WOOD	WOOD	WOOD	14/02/11
002	WOOD	3'-0" x 7'-0"	WOOD	WOOD	WOOD	WOOD	14/02/11
003	WOOD	3'-0" x 7'-0"	WOOD	WOOD	WOOD	WOOD	14/02/11
004	WOOD	3'-0" x 7'-0"	WOOD	WOOD	WOOD	WOOD	14/02/11
005	WOOD	3'-0" x 7'-0"	WOOD	WOOD	WOOD	WOOD	14/02/11



SD PHASE DOCUMENTS - NOT FOR CONSTRUCTION

SOUTH SAN ANTONIO I.S.D.
 ADMINISTRATION AND SUPPORT CENTER
 RENOVATION
 FOR
 SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

DATE: _____
 DRAWN BY: _____
 CHECKED BY: _____
 SCALE: 1/8" = 1'-0"

01 PARTIAL SECOND LEVEL - PHASE 1 - NEW FLOOR PLAN
 SCALE: 1/8" = 1'-0"

02 DOOR & FRAME TYPES
 SCALE: 1/4" = 1'-0"

03 DOOR HEAD DETAIL
 SCALE: 1 1/2" = 1'-0"

04 DOOR JAMB DETAIL
 SCALE: 1 1/2" = 1'-0"

05 PARTITION TYPES
 SCALE: 1/8" = 1'-0"

PHASE 1

1919A

ARCHITECT: JAMES S. DAVIS
 REGISTERED ARCHITECT
 TX. NO. 10874

