

# AIA<sup>®</sup> Document A105<sup>®</sup> – 2017

## **Standard Short Form of Agreement Between Owner and Contractor**

**AGREEMENT** made as of the TWENTY-FIFTH (25<sup>th</sup>) day of OCTOBER in the year TWO THOUSAND TWENTY-FOUR (2024)  
*(In words, indicate day, month and year.)*

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

Calallen Independent School District, a public school district and political subdivision of the State of Texas  
4205 Wildcat Drive  
Corpus Christi, Texas 78410  
Phone: (361) 242-5600

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

Mako Contracting, LLC, a limited liability company of the State of Texas  
1526 Holly Road  
Corpus Christi, Texas 78417  
Phone: (361) 242-5600

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

Calallen ISD 2024 Bond Project –

Fire Lane & Walking Track Improvements Located at: Wood River Elementary School, 15118 Dry Creek Drive, Corpus Christi, Texas 78410 and Magee Intermediate School, 4201 Calallen Dr, Corpus Christi, TX 78410

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

York Engineering, Inc., a corporation of the State of Texas  
9708 S. Padre Island Dr. Ste A200  
Corpus Christi, Texas 78418  
Phone: (316) 245-9400

\*Architect herein shall mean Engineer.

The Owner and Contractor agree as follows:

### **ADDITIONS AND DELETIONS:**

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

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

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENTS
- 5 INSURANCE AND BONDS
- 6 GENERAL PROVISIONS
- 7 OWNER
- 8 CONTRACTOR
- 9 ARCHITECT
- 10 CHANGES IN THE WORK
- 11 TIME
- 12 PAYMENTS AND COMPLETION
- 13 PROTECTION OF PERSONS AND PROPERTY
- 14 CORRECTION OF WORK
- 15 MISCELLANEOUS PROVISIONS
- 16 TERMINATION OF THE CONTRACT
- 17 OTHER TERMS AND CONDITIONS

**NOTE:** Any reference to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document “as modified for this Project”. In addition any reference to AIA Documents shall all be considered to have included the Trademark “™” after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the list of drawings and table of contents for the specifications prepared by the Architect and attached as **Exhibit B**.

*(Paragraph Deleted)*

*(Table Deleted)*

AIA Document A105 – 2017. Copyright © 1993, 2007 and 2017. All rights reserved. “The American Institute of Architects,” “American Institute of Architects,” “AIA,” the AIA Logo, and “AIA Contract Documents” are trademarks of The American Institute of Architects. This document was produced at 11:38:45 ET on 10/25/2024 under Order No.3104241723 which expires on 04/24/2025, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(3B9ADA3A)

(Paragraph Deleted)

(Table Deleted)

.3 addenda prepared by the Architect as follows:

Number	Date	Pages
01-Wood River	09.13.24	2
01-Magee	09.13.24	3
02-Magee	09.17.24	1
03-Magee	09.30.24	1
04-Magee	10.03.24	2

(Table Deleted)

.4 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and

.5 other documents, if any, identified as follows:

**Exhibit A**, Owner's Prevailing Wage Rate Schedule, attached hereto and incorporated herein.

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

### § 2.2 Date of Commencement:

Unless otherwise set forth below, the date of commencement shall be the date of this Agreement.

*(Insert the date of commencement if other than the date of this Agreement.)*

Upon Owner's issuance of a Notice to Proceed.

### § 2.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:

*(Check the appropriate box and complete the necessary information.)*

Not later than one hundred five (105) calendar days from the date of the Owner's issuance of the Notice to Proceed

By the following date:

## ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

FOUR HUNDRED FORTY-SIX THOUSAND SEVEN HUNDRED DOLLARS AND ZERO CENTS  
(\$446,700.00)

This Contract Sum includes the following:

Base Proposal:

Magee Intermediate Sub-Total - \$294,700.00

Init.

AIA Document A105 – 2017. Copyright © 1993, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 11:38:45 ET on 10/25/2024 under Order No.3104241723 which expires on 04/24/2025, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(3B9ADA3A)

Wood River Elementary Sub-Total - \$147,000.00

Owner's Contingency - \$5,000.00

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:  
(Itemize the Contract Sum among the major portions of the Work.)

Portion of the Work	Value
None. (Table Deleted)	

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:  
(Identify the accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

None.

§ 3.4 Allowances, if any, included in the Contract Sum are as follows:  
(Identify each allowance.)

Item	Price
None. (Table Deleted)	

§ 3.5 Unit prices, if any, are as follows:  
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
None. (Table Deleted)		

#### ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor's Applications for Payment certified by the Architect, the Owner shall pay the Contractor, in accordance with Article 12.  
(Insert below timing for payments and provisions for withholding retainage, if any.)

§ 4.2 Undisputed payments remaining unpaid under the Contract on the 31st day after the date the Owner receives a properly documented Certificate of Payment from the Architect are considered overdue and in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251, shall bear interest from that date until the date that the Owner mails or electronically transmits payment, including accrued interest to that date.  
(Insert rate of interest agreed upon, if any.)

Not applicable.

#### ARTICLE 5 INSURANCE AND BONDS

##### § 5.1 CONTRACTOR'S INSURANCE

Init.

§ 5.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain in force, insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the table below, the Agreement, or elsewhere in the Contract Documents. No work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 5 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Texas. 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. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others. 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 under this Article 5. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in this Agreement, unless a different duration is stated below:

Workmen's Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
Employer's Liability:	\$1,000,000.00
Commercial General Liability:	
Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00 (A Designated Construction Project General Aggregate Limit shall be provided)
Personal & Advertising Injury	\$1,000,000.00 each person
Products and Completed Operations	\$1,000,000.00 (for one (1) year, commencing with issuance of final Certificate for Payment)
Property Damage:	\$2,000,000.00 aggregate
Independent Contractors	(Same limits as above)
Contractual Liability	(Same limits as above)
Automobile Liability:	
Bodily Injury/Property Damage	\$1,000,000.00 combined single limit
Property Damage	\$1,000,000.00 each occurrence
Umbrella/Excess	\$1,000,000.00

§ 5.1.2 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 rated at least A-VIII by A.M. Best's Key Rating Guide. 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.

§ 5.1.3 The General Liability and Automobile so issued in the name of Contractor shall also name the Owner and subcontractors as additional insureds, as their respective interests may appear. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. It is the intent of the parties to this Agreement that the General Liability coverage required herein shall be primary to and shall seek no contribution from all insurance available to Owner, with Owner's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Contractor shall be endorsed to provide such primary and non-

contributing liability. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

§ 5.1.4 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.

§ 5.1.5 The insurance required by Section 5.1.1 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. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 5.1.6 Contractor shall have its insurance carrier(s) furnish to Owner with ISO ACORD Form 25 insurance certificates 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. 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 5.1.1. 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 5.1.8 hereof shall apply.

§ 5.1.7 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 5 hereof have been received by Owner and the Architect has issued a written notice to proceed.

§ 5.1.8 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 5.1 hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

#### § 5.1.9 Workers' Compensation Insurance Coverage.

##### .1 Definitions:

- .1.1 **Certificate of coverage ("Certificate").** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.
- .1.2 **Duration of the Project.** Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.
- .1.3 **Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096).** Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- .2 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.
- .3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.
  - .4 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.
  - .5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:
    - .5.1 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
    - .5.2 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.
  - .6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
  - .7 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.
  - .8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
  - .9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:
    - .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
    - .9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
    - .9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .9.4 obtain from each other person with whom it contracts, and provide to the Contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
  - .9.6 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
  - .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.
  - .10 By signing this contract or providing or causing to be provided a certificate of coverage, the 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 Texas Department of Insurance, 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.
  - .11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which 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. [28 TAC §110.110(c)(7)]

§ 5.1.10 The Contractor shall provide an Installation Floater or Builder's Risk Insurance to cover the total value of the entire Project on a replacement cost basis, with the Owner named as an Additional Insured.

**§ 5.2 PERFORMANCE BOND AND PAYMENT BOND**

§ 5.2.1 If the Contract Sum in Article 3 is in excess of \$100,000, 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 the amount equal to ONE HUNDRED PERCENT (100%) of the total combined accepted bid(s).

§ 5.2.2 If the Contract Sum in Article 3 is in excess of \$25,000, 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 the 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.*

*(Table Deleted)*

§ 5.2.3 The Bond(s) 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 AB@ 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.

§ 5.2.4 All bonds will be reviewed by the Owner for compliance with the Contract Documents prior to execution of the contract. In the event that the Owner 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.

§ 5.2.5 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.

§ 5.2.6 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.

§ 5.2.7 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the 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.

§ 5.2.8 By inclusion of this Subsection in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner and its 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 Owner. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, its 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.

## **ARTICLE 6 GENERAL PROVISIONS**

### **§ 6.1 The Contract**

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

### **§ 6.2 The Work**

The term “Work” means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor’s obligations.

### **§ 6.3 Intent**

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.

### **§ 6.4 Ownership and Use of Architect’s Drawings, Specifications and Other Documents**

Documents prepared by the Architect are instruments of the Architect’s service for use solely with respect to this Project. The Architect shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

### **§ 6.5 Electronic Notice**

Written notice under this Agreement may be given by one party to the other by email as set forth below.  
*(Insert requirements for delivering written notice by email such as name, title, and email address of the recipient, and whether and how the system will be required to generate a read receipt for the transmission.)*

Owner’s representative:

*(Name, address, email address, and other information)*  
Emily Lorenz, Superintendent of Schools  
Calallen Independent School District  
4205 Wildcat Drive, Corpus, Christi, Texas 78410-5198  
Phone: (361) 242-5600  
Email: elorenz@calallen.org

Contractor’s representative:

*(Name, address, email address, and other information)*  
Mr. Gabriel Goodman, President  
Mako Contracting, LLC  
1526 Holly Road  
Corpus Christi, Texas 78412  
Phone: (361) 416-0299 (direct)  
Main Phone: (361) 561-6526  
Email: gg@makocontracting.com

## **ARTICLE 7 OWNER**

**§ 7.0.1** The Owner is the Board of Trustees of the Calallen Independent 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. Neither the Architect nor the Contractor may rely upon the direction of any employee of Owner who has not been so designated as Owner's representative. Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

**§ 7.0.2** The Contractor acknowledges that no lien rights exist with respect to public property. Under the laws of the State of Texas, neither the Contractor nor any sub-contractor, mechanic, materialman or laborer, is entitled to acquire or attempt to acquire or contract for any lien upon the improvements covered by this Contract or the land upon which they are situated.

**§ 7.1 Information and Services Required of the Owner**

**§ 7.1.1** If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

**§ 7.1.2** Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

**§ 7.1.3** Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence.

**§ 7.2 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is defective or not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

**§ 7.3 Owner's Right to Carry Out the Work**

If the Contractor is in default on any of its material obligations hereunder, neglects to timely carry out the Work in accordance with the Contract Documents, or fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or non-conforming or defective Work with diligence and promptness, the Owner may, without prejudice to other remedies, correct such defaults or such non-conforming or defective Work. In such case, the Architect may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, provided the actions of the Owner and amounts charged to the Contractor were approved by the Architect.

**§ 7.4 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 7.4.1** 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.

**§ 7.4.2** The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

**ARTICLE 8 CONTRACTOR**

**§ 8.1 Review of Contract Documents and Field Conditions by Contractor**

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

**§ 8.1.2** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to Architect, the Contractor shall assume appropriate responsibility for any such performance and shall bear an appropriate amount of the attributable costs for correction. 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, however any apparent design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect.

### **§ 8.2 Contractor's Construction Schedule**

The Contractor's initial schedule shall be provided with the proposal in response to the Owner's procurement for this Project. As part of the response, Contractor shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The Contractor, promptly after being awarded the Contract, will also prepare and submit for the Owner's and Architect's information a Contractor's final coordinated construction schedule for the Work.

### **§ 8.3 Supervision and Construction Procedures**

**§ 8.3.1** 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 gives 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, 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 by the Owner, in writing, to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by Contractor, the Owner shall be solely responsible for any loss or damage arising solely from the Owner-required means, methods, techniques, sequences or procedures.

**§ 8.3.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, through the Architect, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection.

### **§ 8.4 Labor and Materials**

**§ 8.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

**§ 8.4.2** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-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 stances, 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.

### **§ 8.4.3 PREVAILING WAGES**

The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor 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.

**§ 8.4.3.1** In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Contract as Exhibit B, 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.

**§ 8.4.3.2** A Contractor or Subcontractor who violates the provisions of Section 8.4.3 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).

**§ 8.4.3.3** Substitutions will not be accepted unless approved through the procedures set forth in the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum, regardless of acceptance or rejection, amounts paid to the Architect to evaluate the Contractors 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.

**§ 8.4.3.4** 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.

### **§ 8.5 Warranty**

The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 12.5.

**§ 8.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, 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 under normal usage.

**§ 8.5.2** 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 subcontractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

**§ 8.5.3** 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.

**§ 8.5.4** The warranty provided in Section 8. 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. Contractor will provide a three (3) year warranty on workmanship in addition to all other warranties.

**§ 8.5.5** 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 8.5.1 and 8.5.2 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

**§ 8.5.6** Except when a longer warranty time is specifically called for in the Specification Sections, herein, 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 (1) 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 at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner on re-inspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the 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, 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 (1) year warranty period at least one (1) 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.

**§ 8.5.7 Warranties shall become effective on a date established by the Owner 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 or the date of final payment.**

#### **§ 8.6 Taxes**

The Contractor shall 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.

CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS. Contractor shall cooperate with Owner, take such action and execute such documents as may be necessary so that Owner may utilize its exemption from the Texas Sales and Use Tax for materials used in such Project. The tax-exempt identification number for the Calallen Independent School District is 1-74-6000464-1.

#### **§ 8.7 Permits, Fees and Notices**

**§ 8.7.1** The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

**§ 8.7.2** The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. 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 full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

#### **§ 8.8 Submittals**

The Contractor shall promptly review, approve in writing, and submit to the Architect shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

### **§ 8.9 Use of Site**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

### **§ 8.10 Cutting and Patching**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

### **§ 8.11 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

### **§ 8.12 Indemnification**

**§ 8.12.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 8.12 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), 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), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM THE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER 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 AND CONTRACTOR ARE BOTH PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 8.12.**

**§ 8.12.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 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 8.12.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.**

**§ 8.12.3 THE DUTY TO DEFEND SET OUT ABOVE SHALL NOT APPLY IN THE EVENT THAT THE CLAIM IS BASED, IN WHOLE OR IN PART, ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE OWNER. NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR AGREES TO REIMBURSE THE OWNER'S REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE CONTRACTOR'S LIABILITY.**

**§ 8.12.4 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 SUBCONTRACTORS' 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 WILLFUL,**

**INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, 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 THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER 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 AND CONTRACTOR ARE BOTH PARTIES. 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 8.12.1.**

§ 8.12.4 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the 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.

#### **ARTICLE 9 ARCHITECT**

§ 9.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 9.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 9.3 The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, in accordance with the Contract Documents, the Architect will review and certify the amounts due the Contractor.

§ 9.5 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The Architect will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 On written request from either the Owner or Contractor, the Architect will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

§ 9.8 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.

§ 9.9 The Architect's duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

#### **ARTICLE 10 CHANGES IN THE WORK**

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be

adjusted accordingly, in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.

§ 10.2 The Architect may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

## ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If the Contractor is delayed at any time in progress of the Work 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, the Contract Time shall be subject to equitable adjustment.

§ 11.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

## ARTICLE 12 PAYMENTS AND COMPLETION

### § 12.1 Contract Sum

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

### § 12.2 Applications for Payment

§ 12.2.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price as applicable, the Contractor shall submit to the Architect, before the first Application for Payment, or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, 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 or Owner, shall be used in reviewing the Contractor's Applications for Payment. The period covered by each Application for Payment shall be one (1) calendar month, ending on the last day of the month.

§ 12.2.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 12.2.3 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 stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.4 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 other encumbrances adverse to the Owner's interests. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**



## § 12.3 Certificates for Payment

§ 12.3.1 In each Application 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 subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 12.3.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion, based on the Architect's evaluations of the Work and the data comprising the Application for Payment, that 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 in writing to the Owner. 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 unless 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. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

§ 12.3.3 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 15.2.2 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 12. If the Contractor and the 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 herein, 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;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 **delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of subcontractors and insurance requirements;**
- .9 **failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time;**
- .10 **evidence of financial inability to perform the Contract fully;**
- .11 **failure to submit record documents required by the Contract; or**
- .12 **failure of the Contractor to perform any other obligations of the Contract.**

§ 12.3.4 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in this Agreement.

## § 12.4 Progress Payments

§ 12.4.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments for undisputed amounts in the manner and within the time provided in the Contract Documents, on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Payment shall be made by the Owner not later than thirty (30) days after approval of the Contractor's Application for Payment by the Architect. Owner shall provide written notification to Contractor within twenty-one (21) days if Owner disputes the Contractor's Certificate for Payment pursuant to Texas Government Code section 2251.041 *et seq.*, listing the specific reasons for non-payment. 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. Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule shall be used as the basis for reviewing Contractor's Applications for Payment. Applications for Payment shall comply with all requirements of this Contract, including submission of the required certifications, and shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 12.4.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

§ 12.4.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the following month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment. Subject to the other provisions in the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%);
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate of Payment as provided for in this Contract; and
- .5 Upon Substantial Completion of the Work, add a sum sufficient to increase the total payments to ninety-five percent (95%) of the full amount of the Contract Sum, less such amounts as the Owner shall determine is necessary for incomplete work and unsettled claims.

§ 12.4.4 Retainage, if any, shall be withheld as set out in Section 12.4.3 above.

§ 12.4.5 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 12.4.6 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.

§ 12.4.7 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 to the extent required by Texas Government Code Chapter 2253.

## § 12.5 Substantial Completion

§ 12.5.1 Substantial Completion is the stage in the progress of the Work when the entire Project and all systems are fully complete and fully operable permitting Owner full and complete use of the entire Project, subject only to the

correction or completion of minor finish work items the value of which shall in no event exceed one percent (1%) of the Contract Sum.

**§ 12.5.2** 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.

**§ 12.5.3** Upon receipt of the Contractor's list, the Architect, accompanied by the Owner or Owner's representative, at the Owner's option, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work is substantially complete in accordance with Section 12.5.1, Architect shall issue Certificate of Substantial Completion and shall deliver to the Contractor a "Punch List" of all items which must be completed or corrected before the Work is ready for final inspection and acceptance, which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. If Contractor fails to fully and finally complete the Work within the time specified by the Architect for completion of the Punch List, then Contractor's name may be removed from the list of bidders acceptable to the Owner for the construction of future projects. 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. It is contemplated that Architect shall make no more than three (3) inspections after the Contractor notifies Architect that Contractor considers the Work substantially complete. If upon completion of the third inspection, the Work has not progressed to the point that the Architect can certify that the Work is fully and finally complete in accordance with the Contract Documents, the cost of all additional inspections by the Architect shall be charged to and borne by the Contractor.

**§ 12.5.4** 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.

## **§ 12.6 Final Completion and Final Payment**

**§ 12.6.1** 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 Certificate of Completion and 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 stated in Section 12 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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

**§ 12.6.3** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in the Contract Documents, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 Contractor's Final Application for Payment is properly submitted and accepted by Owner; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 12.6.4 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the issuance of Owner's final Certificate for Payment. Final Certificate for Payment and release of retainage will not be considered unless all testing required by the Contract Documents (including project manual), project specifications and drawings are provided in their final format showing that all findings of noncompliance have been corrected.

§ 12.6.5 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.

### § 12.7 AUDIT

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.

## ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

### § 13.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 13.1.1 Contractor's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and subcontractors 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 subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

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

§ 13.1.3 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.

§ 13.1.4 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.

### § 13.2 HAZARDOUS MATERIALS

§ 13.2.1 The Contractor is responsible for compliance with the requirements of 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. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Upon receipt of the Contractor's written notice, the Owner may 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. Owner shall not be responsible for materials or substances brought to the site by the Contractor. 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 shutdown, delay and start-up. 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 the obligations under this section, except to the extent the cost and expense are due to the Owner's fault or negligence.

### **§ 13.3 CRIMINAL HISTORY RECORDS CHECKS**

#### **§ 13.3.1**

Prior to the commencement of work, Contractor shall take all necessary steps to comply with Texas Education Code, Section 22.0834 by obtaining, if a Qualified Contractor, as defined, or arranging with Owner to obtain, if not a Qualified Contractor, national criminal history record information ("CHRI") as to Contractor and Subcontractors and all persons associated with them including their employees, agents and representatives who a) have or will have continuing duties related to the contracted services; and b) have or will have direct contact with students (each a "Covered Employee").

**§ 13.3.2** If the Contractor or any Subcontractor determines that § 13.3.1 does not apply to an employee, the Contractor or Subcontractor shall make a reasonable effort to ensure that the conditions or precautions that resulted in the determination that § 13.3.1 did not apply to the employee continue to exist throughout the time that the contracted services are provided.

**§ 13.3.3** The requirements of § 13.3.1 do not apply if:

.1 the public work does not involve the construction, alteration, or repair of an Instructional Facility as defined by Section 46.001, Texas Education Code (real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code);

.2. for public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first day the facility will be used for instructional purposes; or

.3 for a public work that involves an existing Instructional Facility:

(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and

(b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

**§ 13.3.4** If the Contractor is not a Qualified School Contractor, a person to whom § 13.3.1 applies must submit to a CHRI review by the Owner.

**§ 13.3.5** Owner and Contractor agree to destroy any CHRI obtained or indexed by the Federal Bureau of Investigation ("FBI") or Texas Department of Public Safety ("DPS") under this § 13.3.1 after the information is used for its authorized purpose. CHRI may only be released to the individual who is the subject of the information, by court order, or as allowed by law.

**§ 13.3.6** Any Covered Employee that has during the preceding thirty (30) years, (a) been convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (b) been convicted of a felony offense under Title 5, Texas Penal Code if the victim of the offense was under 18 years of age at the time the offense was committed; (c) been convicted of an equivalent offense to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History"); shall be disqualified and prohibited from performing any contract duties or services and neither the Contractor nor its Subcontractor may permit such person to provide services at an Instructional Facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Contractor will exclude that person from assignment to the Project. To the extent the Owner, not the Contractor obtains the CHRI described in this § 3.4.5, Contractor understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

§ 13.3.7 Prior to commencement of its work on the Project the Contractor will provide written certification to the Owner that either: (1) Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) Contractor and its Subcontractors of every tier are otherwise exempt from compliance with the requirements contained herein; or (3) Contractor and its Subcontractors of every tier have complied with the statutory and contractual requirements of this Agreement as of that date.

§ 13.3.8 Contractor agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Contractor will immediately remove the Covered Employee from Owner's property or other location where students are regularly present, and notify the Owner of said removal within three (3) days of doing so. Contractor understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement by Owner, in accordance with Article 14, Termination.

#### **ARTICLE 14 CORRECTION OF WORK**

§ 14.1 The Contractor shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

#### **ARTICLE 15 MISCELLANEOUS PROVISIONS**

##### **§ 15.1 Assignment of Contract**

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

##### **§ 15.2 Tests and Inspections**

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 If the Architect requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

##### **§ 15.3 Governing Law**

The Contract shall be governed by the laws of the State of Texas, without regard to the choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the county in which 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 said county.

#### **ARTICLE 16 TERMINATION OF THE CONTRACT**

##### **§ 16.1 Termination by the Contractor**

If the Work is stopped for a period of 14 days through no fault of the Contractor, the Contractor may, upon seven additional 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, and costs incurred by reason of such termination.

##### **§ 16.2 Termination by the Owner for Cause**

§ 16.2.1 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;
- .4 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents;
- .5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in or permits serious or repeated worker misconduct in violation of Article 13;
- .7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .8 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner, after consultation with the Architect, 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

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts actually earned to the date of termination.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

### § 16.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. 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 17 OTHER TERMS AND CONDITIONS

*(Insert any other terms or conditions below.)*

§ 17.1 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if the Contractor has at least ten (10) full time employees, then the Contractor, by its execution of this Agreement represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 17.2 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if Independent Consultant has at least ten (10) full-time employees, then Independent Consultant represents and warrants to the District that the Independent Consultant does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 17.3 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Independent Consultant has at least ten (10) full-time employees, then Independent Consultant represents and warrants to the District that the Independent Consultant does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 17.4 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Contract.

§ 17.5 By signing this Agreement, the undersigned certifies as follows: Under Section 231.009 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld in this certification is inaccurate.

§ 17.6 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars (\$1,000,000.00) or more, the Contractor agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

§ 17.7 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 17.8 Pursuant to Texas Government Code Chapter 2273, Contractor represents and warrants that it is not an abortion provider or an affiliate of an abortion provider.

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

*(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)*

CALALLEN INDEPENDENT SCHOOL DISTRICT

MAKO CONTRACTING, LLC



**OWNER** *(Signature)*

**CONTRACTOR** *(Signature)*

Ms. Emily Lorenz, Superintendent of Schools

Mr. Gabriel Goodman, President

*(Printed name and title)*

*(Printed name and title of authorized representative)*



# EXHIBIT A

**For AIA Document A105-2017, Standard Short Form Agreement Between  
Owner and Contractor**

**Owner:** Calallen Independent School District

**Contractor:** Mako Contracting, LLC

**Architect:** York Engineering, Inc.

**Project:** Calallen ISD 2024 Bond Project – Fire  
Lane & Walking Track Improvements (Wood  
River ES and Magee Intermediate School)

\*Architect shall mean Engineer

## PREVAILING WAGE RATE



REGULATING PROFESSIONAL SERVICES AND THE FUTURE

## CALALLEN ISD PREVAILING WAGE RATE SCHEDULE

*Please note that fringes are only required to be paid on projects that involve federal funds. If you are unsure about whether the project will be using federal funds, please inquire and seek clarification.*

General Decision Number: TX20240288 10/11/2024

Superseded General Decision Number: TX20230288

State: Texas

Construction Type: Building

Counties: Aransas, Nueces and San Patricio Counties in Texas.

**BUILDING CONSTRUCTION PROJECTS** (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<p>. Executive Order 14026 generally applies to the contract.          . The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</p>
<p>If the contract was awarded on or between January 1, 2015 and</p>	<p>. Executive Order 13658 generally applies to the</p>

January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	contract. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.
---	--

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	10/11/2024

BOIL0074-003 07/01/2023

	Rates	Fringes
BOILERMAKER.....	\$ 37.00	24.64

\* ELEC0278-002 08/25/2024

	Rates	Fringes
ELECTRICIAN.....	\$ 30.80	8.97

ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 32.35	13.10

IRON0084-011 06/01/2023

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 27.51	8.13

\* SUTX2014-068 07/21/2014

	<b>Rates</b>	<b>Fringes</b>
BRICKLAYER.....	\$ 20.04	0.00
CARPENTER.....	\$ 15.21 **	0.00
CEMENT MASON/CONCRETE FINISHER.....	\$ 15.33 **	0.00
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13

	<b>Rates</b>	<b>Fringes</b>
IRONWORKER, REINFORCING.....	\$ 12.27 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 22.16	5.26
LABORER: Common or General.....	\$ 9.68 **	0.00
LABORER: Mason Tender – Brick.....	\$ 11.36 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.58 **	0.00
LABORER: Pipelayer.....	\$ 12.49 **	2.13
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 14.25 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93 **	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22 **	0.34
OPERATOR: Forklift.....	\$ 14.83 **	0.00
OPERATOR: Grader/Blade.....	\$ 13.37 **	0.00
OPERATOR: Loader.....	\$ 13.55 **	0.94
OPERATOR: Mechanic.....	\$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03 **	0.00
OPERATOR: Roller.....	\$ 12.70 **	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 14.45 **	0.00

PIPEFITTER.....	\$ 25.80	8.55
PLUMBER.....	\$ 25.64	8.16
ROOFER.....	\$ 13.75 **	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 21.13	6.53
TILE FINISHER.....	\$ 11.22 **	0.00
TILE SETTER.....	\$ 14.74 **	0.00
	<b>Rates</b>	<b>Fringes</b>
TRUCK DRIVER: Dump Truck.....	\$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

---

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

---

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a) (1) (iii)).

---

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

### **Union Rate Identifiers**

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### **Survey Rate Identifiers**

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

### **Union Average Rate Identifiers**

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

### **State Adopted Rate Identifiers**

Classifications listed under the ""SA"" identifier indicate that the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R. 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the

state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

---

## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- an existing published wage determination
- a survey underlying a wage determination
- a Wage and Hour Division letter setting forth a position on a wage determination matter
- a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

---

END OF GENERAL DECISION"



# EXHIBIT B

**For AIA Document A105-2017, Standard Short Form Agreement Between  
Owner and Contractor**

**Owner:** Calallen Independent School District

**Contractor:** Mako Contracting, LLC

**Architect:** York Engineering, Inc.

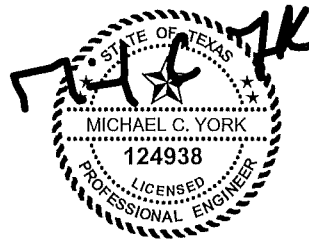
**Project:** Calallen ISD 2024 Bond Project – Fire  
Lane & Walking Track Improvements (Wood  
River ES and Magee Intermediate School)

\*Architect shall mean Engineer

## LIST OF DRAWINGS & TABLE OF CONTENTS FOR SPECIFICATION FOR PROJECT

TECHNICAL SPECIFICATIONS  
FOR THE CONSTRUCTION OF  
PAVING, GRADING,  
& STORM SEWER IMPROVEMENTS  
TO SERVE  
CALALLEN ISD WOOD RIVER  
WALKING TRACK

Owner:  
Calallen Independent School District  
4205 Wildcat Drive  
Corpus Christi, TX 78410



THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY MICHAEL C. YORK, P.E. 124938. ALTERATION OF A SEALED DOCUMENT WITHOUT PROPER NOTIFICATION TO THE RESPONSIBLE ENGINEER IS AN OFFENSE UNDER THE TEXAS ENGINEERING PRACTICE ACT.

09 SEPTEMBER 2024

Prepared By:



**YORK ENGINEERING**

CIVIL • PLANNING • CONSULTING

9708 S. Padre Island Dr., Ste A200  
Corpus Christi, Texas 78418  
Texas Engineering Firm F-22063  
Job No. 1099-24-03

**SECTION 00 01 10**  
**TABLE OF CONTENTS**

**DIVISION 00 – PROCUREMENT AND CONTRACTING REQUIREMENTS**

00 01 10        TABLE OF CONTENTS

**DIVISION 01 – GENERAL REQUIREMENTS**

01 45 23        TESTING REQUIREMENTS  
01 57 23        STORM WATER POLLUTION PREVENTION

**DIVISION 02 – EXISTING CONDITIONS**

02 06 14        GEOTECHNICAL REPORT

**DIVISION 03 – CONCRETE**

03 11 13.11    CONCRETE FORMS  
03 21 11        REINFORCING STEEL  
03 31 11        CONCRETE STRUCTURES  
03 35 11        CONCRETE FINISHING  
03 39 11        CONCRETE CURING

**DIVISION 31 – EARTHWORK**

31 11 00        CLEARING AND GRUBBING  
31 22 13.10    SITE GRADING  
31 22 16.13    ROADWAY SUBGRADE SHAPING  
31 22 16.23    CHANNEL SHAPING  
31 23 16.13    TRENCHING  
31 24 13.10    EMBANKMENT

**DIVISION 32 – EXTERIOR IMPROVEMENTS**

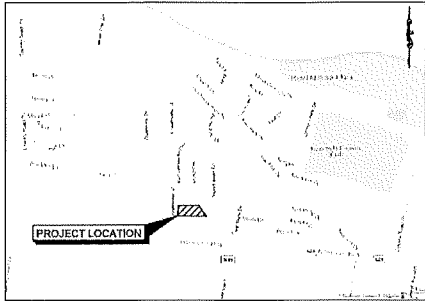
32 11 00        SUBGRADE AND BASE COURSE  
32 13 13        CONCRETE PAVING  
32 16 23        SIDEWALKS  
32 92 19        SEEDING

**DIVISION 33 – UTILITIES**

33 05 10        EXCAVATION AND BACKFILL FOR UTILITIES  
33 42 11        STORMWATER GRAVITY PIPING  
33 42 30        STORMWATER STRUCTURES



# CONSTRUCTION PLANS FOR CALALLEN ISD WOOD RIVER WALKING TRACK CORPUS CHRISTI, TEXAS



LOCATION MAP  
SCALE 1" = 100'

Sheet List Table	
Sheet Number	Sheet Title
1.0	COVER SHEET
1.1	GENERAL NOTES
2.1	SITE DEMOLITION & GENERAL DIMENSION PLAN
2.2	GRADING & STORM SEWER PLAN
3.1	STORM WATER POLLUTION PREVENTION PLAN: PAVING & STORM DETAILS

**IF THE CITY OF CORPUS CHRISTI STANDARD DETAILS LISTED BELOW HAVE BEEN REVISED BY MICHAEL L. OWEN, P.E., OR ANY OTHER ENGINEER, AS BEING APPLICABLE TO THIS PROJECT, THE CITY OF CORPUS CHRISTI STANDARDS INDEX, FROM WHICH THIS POLLUTION PREVENTION PLAN WAS TAKEN, SHALL BE A SOURCE OF THE REVISIONS. THESE CHANGES SHALL BE SHOWN ON THIS PLAN WITH POLLUTION PREVENTION PLAN STANDARD DETAIL SYMBOLS.**

**NOTE:**  
CONTRACTOR IS RESPONSIBLE FOR OBTAINING THE MOST CURRENT VERSION OF APPLICABLE CITY STANDARDS FROM THE CITY OF CORPUS CHRISTI, CITY ENGINEER'S OFFICE, AND PART OF THE CONSTRUCTION DOCUMENTS.

**OWNER / DEVELOPER:**  
CALALLEN INDEPENDENT SCHOOL DISTRICT  
4305 BRUNNEN DRIVE  
CORPUS CHRISTI, TX 78418

**CIVIL ENGINEER:**  
YORK ENGINEERING, INC.  
3708 S. FAYE ISLAND DR.  
SUITE 1000  
CORPUS CHRISTI, TX 78418

**SURVEYOR:**  
TEASER BOYD LAND SURVEYING, INC.  
2025 S. STANLEY ST., SUITE 801  
CORPUS CHRISTI, TEXAS 78411  
JAMES L. WOOD  
LICENSE # 11854  
361-562-5000



PREPARED BY:  
**YE YORK ENGINEERING**  
CIVIL • PLANNING • CONSULTING

11000 Lakeshore Blvd., Suite 100, Corpus Christi, Texas 78416  
2610 Avenida T. Comstock, 1st Floor, Corpus Christi, TX 78401  
For more information, call 361-562-5000 or visit our website at ye.com

