



AIA[®]

Document A101™ – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 17th day of January in the year 2017
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)
Collin County Community College
3452 Spur 399
McKinney, Texas 75069

and the Contractor:
(Name, address and other information)
Core Construction
10625 North County Road
Frisco, Texas 75034-3831
Ph.: (972) 668-9340
Fax: (972) 668-9351

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

Public Safety Training Center
3600 Redbud Boulevard
McKinney, Texas 75069

The Architect:
(Name, address and other information)
PBK
14001 Dallas Parkway, Suite 400
Dallas, Texas 75240

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.

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

Init.

User Notes:

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ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract shall consist of the Agreement between the Owner and the Contractor where the Basis is a Stipulated Sum – AIA A101-2007, as amended for the Project ("Agreement"); the General Conditions of the Contract for Construction – AIA-A201-2007, as amended for this Project, ("General Conditions" or "General Conditions of the Contract"); the Drawings and Specifications; exhibits to this Agreement or to the General Conditions of the Contract; Addenda issued prior to the execution of this Agreement; the Project Manual for the Project, if applicable; the Contractor's bonds and proof of insurance; other documents listed in this Agreement; and Modifications (as defined in the General Conditions) issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. As used in the Agreement or the General Conditions, the term "Contract Documents" has the same meaning as "Contract." Any capitalized terms not defined in this Agreement shall have the meanings set forth in the General Conditions of the Contract.

§ 1.2 The Contract Documents may be amended only by written instrument signed by both the Owner and Contractor. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, and the terms and conditions in the General Conditions shall take precedence over all other terms and conditions contained in the other Contract Documents, including the Proposal, unless specifically agreed otherwise herein.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be: _____
(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

Shall be fixed in a Notice to Proceed. The Contractor may not commence construction, however, until all bonds and insurance required by the Contract Documents have been received by the Owner.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work Not later than () days from the date of commencement, or as follows:

(Paragraphs deleted)

(Table deleted)

Substantial Completion: May 1, 2018

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Thirty-six million, seven hundred seventy seven thousand five hundred and thirty-three and No/100 Dollars (\$36,777,533.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of 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.)

Alternate No. 4b..... Live Fire Props and associated items by BullEx

Alternate No. 5a..... Shooting Range Target and Control Systems as well as
..... any associated items by Meggitt Training Systems

See Exhibit C Schedule for Value Engineered Terms

§ 4.3 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit
1. Duplex Power Outlet	Each	\$104.00
2. Quad Power Outlet	Each	\$132.00
3. Data Drops	Each	\$275.00
4. Concrete Sidewalk	Square Foot	\$6.00
5. Chain Link Fence	Linear Foot	\$38.50
6. Drilled Piers		
	12 inch diameter	\$27.50
	18 inch diameter	\$61.60
	24 inch diameter	\$71.50
	30 inch diameter	\$83.60
	36 inch diameter	\$113.30
	42 inch diameter	\$146.30
7. Steel Casings		
	12 inch diameter	\$38.50
	18 inch diameter	\$55.00
	24 inch diameter	\$66.00
	30 inch diameter	\$77.00
	36 inch diameter	\$104.50
	42 inch diameter	\$126.50

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
A. Owner's Contingency Allowance	\$700,000.00
B. Graphics Allowance	\$50,000.00
C. Pier Overage Allowance	\$100,000.00
D. Governmental Agency Allowance	\$50,000.00
E. Access Control Software Allowance	\$50,000.00
F. Roof Vent Prop (Alternate No. 1)	Not to exceed \$200,000.00

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 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 on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, with the last payment at Final Completion being the five percent (5%) retainage.

§ 5.1.3 The Owner shall make payment of the undisputed amount certified by the Architect to the Contractor not later than thirty (30) days after receipt by the Owner of the Certified Application for Payment. Notwithstanding the foregoing or any other provision in this Agreement or the Contract, no payment by the Owner shall be considered past due or not paid when due except in accordance with Section 2251.021 of the Texas Government Code.

§ 5.1.4 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 Architect or Owner may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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

- .1 Take that portion of the 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 (5.00%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions of the Contract;
- .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 (5.00%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions of the Contract.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

(Paragraph deleted)

- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions of the Contract.

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

(Paragraph deleted)

No reduction of retainage shall occur until Final Completion and final payment.

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

§ 5.2 FINAL PAYMENT

§ 5.2.1 The Owner shall pay Contractor the final payment, constituting the entire unpaid balance of undisputed amounts of the Contract Sum if the following conditions precedent to final payment have been met by the Contractor:

1. Except for the Contractor's continuing obligation to correct defective Work and to satisfy other requirements discovered after final payment, the Contractor has fully performed the Contract;
2. The Contractor has provided copies of and assigned to Owner all warranties for the materials incorporated into the Work and any other warranties as required by the Contract;
3. All requirements for Final Completion and final payment set forth in Section 9.10 of the General Conditions, in the Project Manual, and as otherwise set forth in this Contract have been met; and
4. A final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made 45 days after the issuance of the Architect's final Certificate for Payment; except that no payment by the Owner shall be considered past due or not paid when due except in accordance with Section 2251.021 of the Texas Government Code.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of the General Conditions of the Contract, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(Paragraphs deleted)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of the General Conditions of the Contract, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

The parties expressly reject arbitration as a means of dispute resolution

Litigation in a court of competent jurisdiction

Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions of the Contract.

§ 7.2 The Work may be suspended by the Owner or the Contractor as provided in Article 14 of the General Conditions of the Contract and as provided in Chapter 2251 of the Texas Local Government Code.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of the General Conditions of the Contract, the reference refers to that provision as set forth in the AIA Document A201-2007, General Conditions of the Contract as amended for this Project.

§ 8.2 Payments of undisputed amounts due and unpaid under the Contract shall bear interest in the amount permitted under Chapter 2251 of the Texas Government Code.
(Paragraph deleted)

§ 8.3 The Owner's representative:
(Name, address and other information)
Bill King, Ph.D.
Executive Director Facilities & Construction
Collin County Community College
3452 Spur 399
McKinney, Texas 75069

§ 8.4 The Contractor's representative:
(Name, address and other information)
Gary Frazier
President
Core Construction
10625 North County Road
Frisco, Texas 75034-3831

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 Wage Rates-Prevailing: The Contractor agrees that no employee used in this construction will be paid less than the minimum wage rates as provided in the Contract Documents, as set forth in Article 13.11 of the General Conditions of the Contract.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor, as amended for this Project.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction, as amended for this Project.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

See Exhibit A
(Table deleted)

§ 9.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See Exhibit B
(Table deleted)

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
No. 1	October 6, 2016	3
No. 2	October 13, 2016	69
No. 3	October 19, 2016	42
No. 4	October 24, 2016	17
No. 5	January 5, 2017	2

(Paragraph deleted)

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 Those listed in Section 1.1 of this Agreement.
- .2 Other documents, if any, listed below:

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of the General Conditions of the Contract and as set forth below.

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$00.00)
---------------------------	---

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

OWNER
COLLIN COUNTY COMMUNITY COLLEGE


 Collin College
 BY (Signature)

H. Neil Matkin, Ed.D, District President
(Printed name and title)

CONTRACTOR


 CORE CONSTRUCTION LLC OF TEXAS, INC.
 CONTRACTOR (Signature)

Corey Fox, President
(Printed name and title)

(Paragraphs deleted)

AIA Document A101- 2007

Exhibit C

CONSTRUCTION COST- PBK RECOMMENDATION

128,681

ITEM	COST
Classroom Building & Gun Range	
Burn Structures	
Sub-Total	\$ 33,250,000.00
Fire Props By Bullex (Alternate #4b)	\$ 1,437,162.00
Shooting Range by Meggitt (Alternate #5a)	\$ 2,732,178.00
Roof Vent Prop - Allowance NTE	\$ 200,000.00
Value Engineering Options Selected To Date	(\$941,807)
Total CORE Construction Contract	\$ 36,777,533.00
Less Partner Contributions	
City of McKinney Fire	\$ (2,200,000.00)
City of McKinney Law Enforcement	\$ (1,500,000.00)
City of Allen Law Enforcement	\$ (4,600,000.00)
Total Construction Cost	\$ 28,477,533.00
Total Construction Cost	\$ 28,477,533.00
Target Total Construction Cost	\$ 28,500,000.00
Delta	\$ (22,467.00)

SOFT COSTS

ITEM	COST
A/E Fee at 5.4%	\$ 1,985,986.78
Survey, Geotech & Permits	\$ 65,000.00
Technology/Security	\$ 800,000.00
Furniture & Equipment	\$ 750,000.00
Sub-Total	\$ 3,600,986.78
Total Project Cost	\$ 40,378,519.78
Target Total Project Cost	\$ 40,395,255.52
Delta	\$ (16,735.74)

VE Items Priced by CORE Selected by College

1. Use ACT 01 in lieu of 02, 03, 06 per G0.51 sketch from PBK	\$11,115
2. Delete 80 lf of Railroad Track	\$6,252
3. Deduct all painting of galvanized steel at Buildings 4, 5, 6 and Site Elements	\$1,008
4. Use Pac Clad flat panel in lieu of Composite Metal	\$97,500
5. Revise underground future technology site items	\$49,561
6. Use standard weather days of 70 in lieu of specified 81	\$11,000
7. Delete Cityscape screens @ Gun Range Energy Recovery Units	\$40,000
8. Aluminum feeders in lieu of copper 1 ott and larger	\$33,000
9. Hydromulch per CORE sketch	\$60,954
10. Use tiff sport bermuda grass in lieu of artificial turf	\$32,940
11. Change container trees to B&B and use 15G Nellie Stevens in lieu of 30G	\$7,500
12. Delete Insulated Tilt Wall Panels	\$85,575
13. Use Running Bond in lieu of Stacked Bond	\$22,200
14. Deduct Ribbon Windows at Apparatus Bay	\$20,000
15. Deduct Steel Canopy detail 2/5A6.1	\$2,570
16. Provide Steel Panels in lieu of Aluminum	\$10,882
17. Use non AWI-Certified Sub and Install P-Lam tops at Control Room	\$23,000
19. Manual Flush Valves in lieu of Automatic	\$14,250
20. Use Factory mounted VFD's in lieu of Field Installed	\$7,500
21. Delete ABAA Certification requirement for waterproofing	\$5,000
22. Reduce owners contingency	\$300,000
Total Value Engineering Options Not Selected	\$841,807



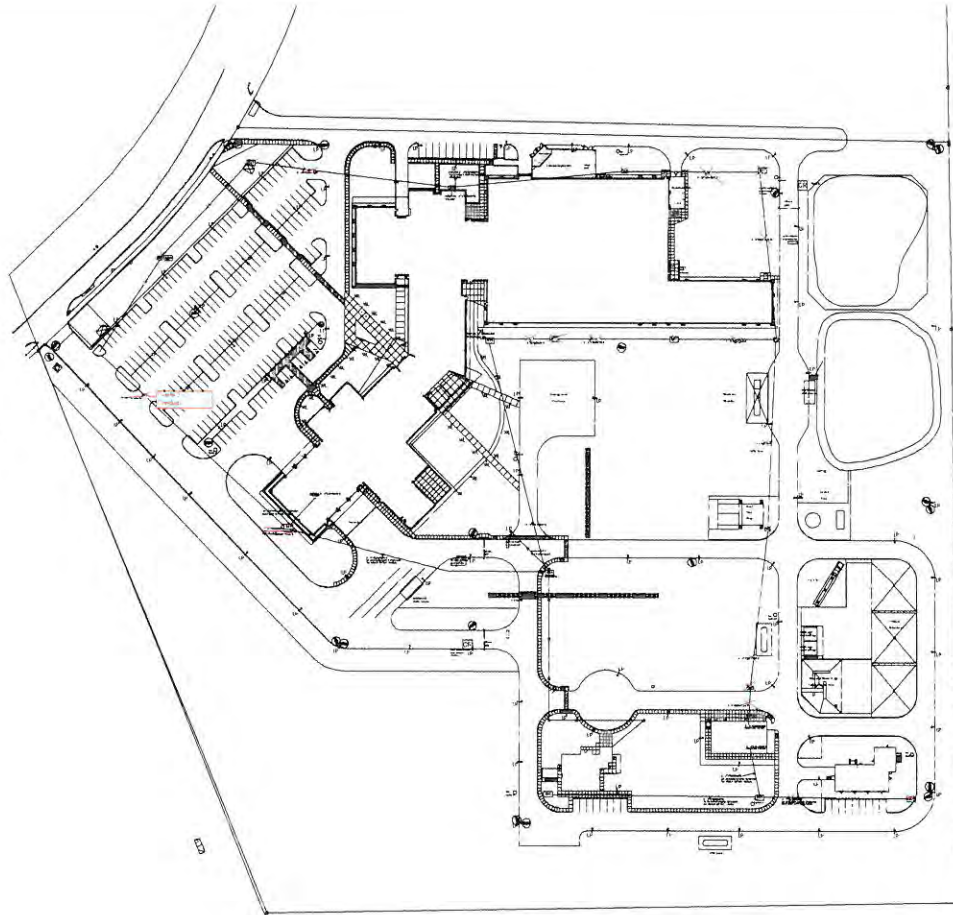
Collin College Public Safety Training Center

Qualifications

1/10/2017

- 1 Standard CMU with integral color as indicated per the schedule had been included at Buildings 5 & 6. Split faced CMU and Burnished CMU has not been included at any areas.
- 2 The flow rate requirements for the irrigation well have not been specified, however, the drop pipe size has been specified to be 4" and the casing size has been specified to be 6". The irrigation well has been bid according to these sizes, however, the 4" drop pipe size either needs to reduce to 3" (a credit would be offered for this) or the casing size needs to be upsized to 8" (there will be an add cost for this). Since the required flow rate is undefined, it is undetermined if 3" or 4" drop pipe is needed.
- 3 Spray fireproofing has not been included at any areas. Details 7,9 / 1A5.10 indicate spray fireproofing at the underside of the gun range deck, however, no specification has been provided and no fire rating indicated. Since there is a light weight insulating concrete deck at this area, it is assumed this will provide sufficient fire rating. Additionally, several columns are graphically shown to have fireproofing on them (but there are no specific callouts) per details on 1A5.01.
- 4 All proposed cost reduction items as proposed by CORE Construction are to be considered budgetary until plans and specs have been updated to reflect all design implications and acceptance of a proposed change.
The following clarifications are hereby provided pertaining to the accepted VE items:
 1. VE item 4 - Use Pac Clad flat panel in lieu of Composite Aluminum at all locations where composite aluminum is indicated (fascia at the main building).
 2. VE item 5, "Revise underground future technology site items" is in accordance with the attached sketch.
 3. VE item 9, "Hydromulch per CORE sketch", assumes use of Tiff Sport Bermuda. With acceptance of this VE, it shall be understood that the hydromulch grass will not be established at time of substantial completion. In the event that grass must be established at time of substantial completion in order to receive a certificate of occupancy, solid sod must be used and the full amount of \$60,954 shall be added back via a change order to allow for sod to be installed.
See attached sketch.
 4. VE item 12, "Delete insulated tilt wall panels and replace with standard tilt wall panels", is based on using R11 batt insulation at the interior side of the wall with no gyp board or metal stud framing. Panel thickness is assumed to be 8"
 5. VE item 14, "Deduct ribbon windows at the apparatus bay" assumes that brick type B03 will infill the deleted ribbon windows.
 6. VE item 16, "Provide steel panels in lieu of Aluminum" applies to the mesh infill at the stairs. Unpainted galvanized steel will be provided in lieu of aluminum.
 7. VE item 18, "Reduce the thickness of the AR500 Plate from the 25 yard line back" includes reduction of thickness from 3/8" to 1/4".
 8. VE item 19, "Manual flush valves in lieu of Automatic" includes providing manual water closets, urinals and faucets at all locations in lieu of sensor operated.
 9. VE item 20, "Use factory mounted VFDs in lieu of field installed" applies to all air handling units.
- 5 Lime stabilization has been included where specified at 12 percent (approx 54 pounds / square yard) at 6" as specified. If additional quantity of lime is required as directed by GME, CORE Construction shall be compensated for the additional quantity of lime.
- 6 The auxiliary technology systems scope has been included for in accordance with specification section 24 41 11 as defined per article 2.1. A quantity of (7) panasonic interior dome cameras has been included at the Simunitions room (no quantity has been indicated in the plans or specs). No other interior or exterior cameras have been included either furnished or installed. Cost has been included for cabling to be provided and installed for all interior and exterior cameras.

A:\Projects\2016\Collin College\2016\Collin College\16-001\16-001.dwg
2/2/2016 11:14:23 AM



1 TECHNOLOGY SITE PLAN
DATE: 2/2/16

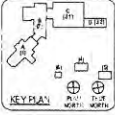
SITE PLAN TECHNOLOGY NOTES

- 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE IBC, AS APPLICABLE TO THIS PROJECT.
- 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
- 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.



PROJECT NO.	16-001
PROJECT NAME	Collin College
DATE	2/2/16
SCALE	AS SHOWN
DRAWN BY	J. B. BROWN
CHECKED BY	J. B. BROWN
DATE	2/2/16
PROJECT LOCATION	Collin College
PROJECT DESCRIPTION	Technology Building
PROJECT NO.	16-001
PROJECT NAME	Collin College
DATE	2/2/16
SCALE	AS SHOWN
DRAWN BY	J. B. BROWN
CHECKED BY	J. B. BROWN
DATE	2/2/16

Collin College PSTC



NO.	16-001
PROJECT NAME	Collin College
PROJECT NO.	16-001
DATE	2/2/16
DRAWN BY	J. B. BROWN
CHECKED BY	J. B. BROWN
DATE	2/2/16

TECHNOLOGY SITE PLAN

TS1.00

SMOKE GENERATION SYSTEM



ANALYSIS BY	12/5/2016	Alt 4B	Alt 4C	Alt 4A			
DESCRIPTION		BIDDERS					
		BULLEX 518-526-2701 Simmon Balint sbalint@bullex.com	KFT Fire 201.509.7488 Lauren 201.300.8100	Fireblast Global 800.716.1977 Rick Egelin Jessica			
BASE BID		Kyle Haines					
119405	Smoke Generatoin & Distribution	50,729	included	102,436			
119505	High Temp Lining Systems	117,156	included	468,704			
130005	Interior Structural Fire Trainers	747,770	1,709,250	1,255,979			
130020	Live Fire Dumpster Prop	17,765	30,400	36,500			
133050	Containerized Live Fire Flashover Training alternate bid?	357,000	679,500	310,678			
13025	Exterior Gas Meter prop Addm 3	R 34421	R 7950	R 19550			
130040	Electrical Panel Fire Simulator Addm 3	R 37599	R 18200	R 23362			
	2 year mainatance and warrantee supply to propane to the building CORE Insurance and fee	included 140,142	70,357				
CORE bid Amount w/Insurance and General Conditions		1,430,562	2,641,440	2,328,069	-		

VALUE ENGINEERING

1 High Temperature Lining Clarification	N/C	N/C	(171,518)
2 Live fire Prop Dimensions	N/C	N/C	(97,172)
3 Live Fire Prop warranty 5 years	3,300	142,875	N/C
4 3 year Service Agreement	3,300	212,351	130,848
5 48 hour response to warrantee	N/C	N/C	N/C
Accepted Total	1,437,162		



AIA[®]

Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

Public Safety Training Center
3600 Redbud Boulevard
McKinney, Texas 75069

THE OWNER:

Collin County Community College District
3452 Spur 399
McKinney, Texas 75069
Telephone:
Fax:

THE ARCHITECT:

PBK
14001 Dallas Parkway, Suite 400
Dallas, Texas 75240

THE CONTRACTOR:

Core Construction
10625 North County Road
Frisco, Texas 75034-3831
Telephone: 972-668-9340
Fax: 972-668-9351

ADDITIONS AND DELETIONS:

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Init.

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User Notes:

(2018785615)

- 10 PROTECTION OF PERSONS AND PROPERTY
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- 13 MISCELLANEOUS PROVISIONS
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User Notes:

(2018785615)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents shall consist of the Standard Form of Agreement between Owner and Contractor where the basis of payment is a stipulated sum (AIA Document A101-2007), as modified by the parties for the Project including all Addenda and Exhibits thereto ("Agreement"); the General Conditions of the Contract for Construction (AIA Document A201 - 2007), as modified by the parties for the Project ("General Conditions"); any Supplementary Condition; prepared by The Architect; all amendments to the Agreement; all amendments to the General Conditions; the Construction Documents approved by Owner; the Contractor's bonds and proof of insurance; the Drawings, Specifications; Addenda issued prior to the execution of the Contract; other documents listed in the Contract; and Modifications issued after execution of the Contract.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or in writing, between the Parties with regard to the Project or the subject matter contained in the Contract. The Construction Documents become part of the Contract when accepted by the Owner. All sections of the Project Manual shall be a part of the Contract, including the Proposal signed by the Contractor, and the Request for Proposals for the Project ("RFP"). The Contract may be amended or modified only by a written Modification signed by the Owner. A Modification is (i) a written amendment to the Contract signed by both parties; (ii) a Change Order; (iii) a Construction Change Directive; or (iv) a written order for minor change in the work issued by the Owner.

§ 1.1.3 THE WORK

The term "Work" means all construction services required by, and included in the Contract Documents for the Project whether completed or partially completed, and includes all other labor, materials, equipment, parts, supplies, skills, supervision, transportation, services, and other facilities and things necessary, proper, or incidental for the Contractor to carry out and complete its obligations under the terms of the Contract. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 CONSTRUCTION DOCUMENTS

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

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 NAME OF PARTIES

Init.

THE MEP Engineer:

RWB Consulting Engineers
12001 North Central Expy., Ste. 1100
Dallas, Texas 75243

THE CIVIL ENGINEER:

RLK Engineering
111 N. Main St.
Allen, Texas 75013

THE STRUCTURAL ENGINEER:

AG&E Structural Engenuity
15280 Addison Rd., Ste. 310
Addison, Texas 75001

THE FOOD SERVICE CONSULTANT:

FDP
2655 Villa Creek Dr., Suite 233
Dallas, Texas 75234

THE LANDSCAPE CONSULTANT:

Studio Outside
824 Exposition Ave., Ste. 5
Dallas, Texas 75226

THE PUBLIC SAFETY CONSULTANT:

G2 Solutions Group, Inc.
4110 Costero Risco
San Clemente, California 92673

THE GEO-TECHNICAL CONSULTANT:

GME Consulting Services, Inc.
2526 Manana Drive, Suite 109
Dallas, Texas 75220

THE AIR BALANCE CONSULTANT:

Engineered Air Balance
P.O. Box 850596
Richardson, Texas 75085

§ 1.1.10 PROPOSAL DOCUMENTS

Proposal Document consist of all documents bound into or referenced in the Project Manual, the Drawings, and Addenda related thereto. The Project Manual contains the Proposal Requirements, Sample Forms, Form of the Agreement, Conditions of the Contract, the Specifications, and a list of Drawings and Schedules, some of which are bound into the Project Manual (Other Drawings and Schedules are bound separately.) The terms "proposal" and "competitive sealed proposal" have the same meaning.

§ 1.1.11 ABBREVIATIONS

N.I.C. By Others; By Owner; Existing	Not in contract. Indicating work not to be done by this Contractor under this Agreement.
ACI	American Concrete Institute
ADA	American with Disabilities Act
ADAAG	American Disabilities Act Accessibility Guidelines for Building Facilities
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ASA	American Standards Association
ASTM	ASTM International
AWSC	American Welding Society Code
FS	Federal Specification
NBS	National Bureau of Standards
NEC	National Electric Code
SPR	Simplified Practice Recommendation
TAS	Texas Accessibility Standards
UL	Underwriters Laboratories, Inc.

§ 1.1.12 ADDENDA, ADDENDUM

Documents issued by Architect prior to execution of the Owner Contractor Agreement that modify or clarify the Proposal Document. The addenda become a part of the Contract Documents.

§ 1.1.13 [INTENTIONALLY BLANK]

§ 1.1.14 The terms Approved, Approved Equivalent, Approved Equal, and Or Equal, relate to the substitution of products or systems approved in writing by the Architect and or prior or competitive sealed proposal receipt. Refer to paragraph 3.19 Substitution of Products and Systems for procedure which must be followed after award of contract. The substitution procedure process to be followed prior to receipt of competitive sealed proposals is described in the Instruction of Bidders.

§ 1.1.15 CONTRACT TIME

The period of time that is established in the Contract Documents for Substantial Completion of the Work. This period

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of time is not subject to adjustment or extension without the written permission of the Owner. This period of time is subject to authorized adjustments for Unanticipated Weather Days and other Calendar Day extensions of time as enumerated in the Contract Documents.

§ 1.1.16 DATE OF AGREEMENT

The latter of the date the Owner formally awards a Contract for Construction of the Work through written notification and the date that the Owner and the Contractor execute the Agreement with the General and Supplementary Conditions. This date will be inserted on the first page of the Agreement Between Owner and Contractor and shall be referenced in Performance Bond and Payment Bond forms. See also Date of Commencement of the Work.

§ 1.1.17 DATE OF COMMENCEMENT OF THE WORK

The date that a written Notice to Proceed is delivered to the Contractor. This date constitutes day zero ("0") of the stated Contract Time.

§ 1.1.18 DATE OF FINAL COMPLETION

The end of construction. Refer to Paragraph 9.10.

§ 1.1.19 DATE OF SUBSTANTIAL COMPETION

Refer to AIA Document A201, Paragraphs 8.1.3 and 9.8.1

§ 1.1.20 DAY

The following days are referenced in the documents:

- .1 Calendar Days: The days of the Gregorian Calendar. The Contract Time is established in Calendar Days and extensions of time granted for Regular Work Days lost, if any, will be converted to Calendar Days.
- .2 Holidays: The days officially recognized by the construction industry in this area as a holiday; normally limited to the observance days of New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and the day after, and Christmas Day.
- .3 Regular Work Days: All calendar days except holidays, Saturdays, and Sundays. Requests for extensions of time shall be requested on the basis of Regular Work Days, and those days, if approved; will be converted to calendar days by multiplying by a factor of one and four-tenths (1.4).
- .4 Anticipated Weather Days: An allowance of regular Work Days, established as anticipated Work Days lost due to weather delays; said allowance shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather. Anticipated Weather Days total 70 calendar days per year.

§ 1.1.21 NOTICE TO PROCEED

A notice that may be given by the Owner to the Contractor that directs the Contractor to start the Work. It may also establish the Date of Commencement of the Work.

§ 1.1.22 PROVIDE

Whenever the word "provide" is used in these documents, it shall mean the same as "furnish and install".

§ 1.1.23 PUNCH LIST

A comprehensive list prepared by the Contractor prior to Substantial Completion to establish all items to be completed or corrected; this list may be supplemented by the Architect or Owner. Refer to Subparagraph 9.8.2.

§ 1.1.24 STRUCTURE OF SPECIFICATIONS

- .1 In the preparation of the specifications, an effort has been made to segregate the various sections of the specifications under headings, by trade. This is done only for convenience and shall not relieve the Contractor of the responsibility of furnishing every item indicated or specified whether properly segregated or not.
- .2 No responsibility, either direct or implied, will be assumed by the Owner or the Architect for omissions or duplications by the Contractor in the completion of the Contract due to any alleged error in the arrangement of these specifications, nor shall any such segregation of work and materials serve to make the Architect and arbiter in defining limits to the agreements between the Contractor and his subcontractor or suppliers.
- .3 The misplacement, addition or omission of any letter, word or punctuation mark shall in no way damage the true spirit, intent, or meaning of these specifications.
- .4 Abbreviations of the names of technical organizations and societies whose specifications, standards, or criteria are included by reference or noted by initials. References are the latest editions published prior to the date of the specifications unless otherwise noted.

§ 1.1.25 INTERPRETATIONS OF DETAILS, METHODS, SPECIFICATIONS, ETC.

- .1 The following paragraphs are intended to govern throughout these specifications as though repeated under each separate section. These paragraphs are herein only in order to simplify the specifications and avoid repetition.
- .2 "The Contractor shall be responsible for the proper working, workmanship, installation, operation, appearance and durability of items incorporated into the project." (The excuse that it was installed "as detailed or specified" and it does not function properly is not valid. If the Contractor is in disagreement with any items, details, methods, or specifications, he shall notify the Architect in writing prior to their incorporation in the work. Such matters will be clarified in writing by the Architect.)
- .3 "All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with printed instructions of the manufacturer."
- .4 "The Contractor shall execute each part of the Work in strict accordance with the Contract Documents. The Contractor and all sub-contractors shall have the qualifications and skill required to complete the work in each of the trades and specialties involved. Where there is any doubt as to the requirements or quality of the work, the Contractor shall secure instructions or clarifications from the Architect before executing the work in question."

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably anticipated from them as being necessary to produce the intended results.

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

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

§ 1.2.4 Conflicts or discrepancies among the Contract Documents shall be resolved in the following order of priority: (1) the Agreement (including any attachments), as may be modified or amended; (2) these General Conditions; (3) any Supplementary Conditions; (4) Drawings and Specifications; (5) other documents forming the Contract Documents and Modifications issued after the execution of the Contract. Except as otherwise specified herein, amendments, revisions, and Modifications of later date take precedence over those of earlier date. Drawings

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govern Specifications for quantity and location, and Specifications govern Drawings for quality and performance requirements. If there is a discrepancy in the quantity or quality stated, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality.

§ 1.2.5 Standards And Requirements

When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Contract date shall apply. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements. When specific products, systems, or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for proper functioning also shall be provided to the extent that it is customary or a trade practice within Contractor's specialty to provide such ancillary devices.

§ 1.2.6 Optional Materials And Processes

Where the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, the parties shall deem this provided for the express purpose of establishing a standard of function, dimension, appearance, and quality of design in harmony with the Work, and not intended for the purposes of limiting competition. Materials or equipment shall not be substituted unless the Contractor obtains approval from the Owner for such substitution. When requesting substitution, the Contractor shall submit the proposed substitution in writing and should contain sufficient information to allow the Owner to determine if the proposed substitution is in fact equal or better than the requirements of the Contract Documents. The Owner shall review the proposed substitutions within a reasonable time. The Owner may approve substitutions only when the substitution is clearly proven by the Contractor to be equal in performance characteristics to the requirement of the Contract Documents, to be equally compatible with existing installations, and to be complimentary to the architectural design of the Work. The final selection of color and pattern will be made by the Owner from the range available within the options selected by the Contractor, unless the item is specified to match a specific color or sample furnished.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined in either these General Conditions or the Agreement, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects to the extent not inconsistent with the definitions in the Agreement or these General Conditions.

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER CONSTRUCTION DOCUMENTS

§ 1.5.1 To be effective, all Contract Documents requiring signatures must be signed by both the Owner and Contractor. If an approved Contract Document requiring signature has not been signed, then the missing signature shall be provided within a reasonable period of time.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Construction Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Construction Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Construction Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in dereliction of the Owner's copyrights or other reserved rights. Except for its record set, Contractor shall deliver all copies of the Construction Documents to Owner upon the earlier to occur of the Owner's request, completion of the Work, or termination of the Contract.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

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§ 1.6.1 The Drawings, Specifications, and other Documents, including those in electronic form, prepared by the Owner, Contractor, Architect, design consultants or professionals, other consultants, (but not including documents relating to their respective businesses in general), are Owner's Property ("Construction Documents ") through which the work to be executed by the Contractor is described. The Contractor may retain one record set of the Construction Documents. Neither the Contractor nor the Architect, nor any design consultant or professional, other consultant, Subcontractor, Sub-subcontractor, nor material or equipment supplier shall own or claim a copyright in the Construction Documents, and unless otherwise indicated, the Owner will own them and have all common law, statutory, and other reserved rights, in addition to the copyright, upon creation of the Construction Documents. To this end and to the extent that Contractor has any ownership interest in the Construction Documents, Contractor agrees and does hereby assign, grant, transfer, and convey to Owner, its successors and assigns, Contractor's entire right, title, interest and ownership in and to such Construction Documents, including, without limitation, the right to secure copyright registration. Contractor confirms that Owner and its successors and assigns shall own Contractor's right, title, interest in and to, including the right to use, reproduce, distribute by sale, rental, lease, or lending, or by other transfer of ownership, to perform publicly, and to display, all such Construction Documents, whether or not such Construction Documents constitutes a "Work Made for Hire" as defined in 17 U.S.C. § 201(b). To the extent necessary to effectuate the obligations and covenants of this Section, Contractor shall obtain similar assignments from Contractor's consultants, subcontractors, sub-subcontractors, materialmen, and suppliers; provided, however that Contractor shall not be required to obtain assignment of preexisting intellectual property rights of any consultant, Subcontractor, Sub-subcontractor, materialmen, or supplier. Contractor shall provide evidence of any such preexisting intellectual property rights so claimed. If any consultant, Subcontractor, Sub-subcontractor, materialmen, or supplier refuses to grant Owner the assignment, Contractor shall immediately inform the Owner. The Construction Documents and copies thereof furnished to the Contractor are for use solely with respect to this Project.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and these General Conditions and is referred to throughout the Contract Documents as singular in number. The Board of Trustees ("Board"), by majority vote, is the only representative of the Owner, a public junior college district organized under the laws of Texas, having the power to enter into a contract, to approve changes in the scope of the Work, to execute a Change Order requiring an increase in the Contract Sum, or to agree to an extension of the Substantial or Final Completion dates.. The Owner designates authorized representatives to act on its behalf for day-to-day operations under the Contract. The Owner's authorized representative shall be the Executive Director of Facilities and Construction, who may delegate responsibilities as appropriate. Notwithstanding the foregoing or anything herein to the contrary, the Executive Director of Facilities and Construction is delegated to approve changes to the Work. The Architect does not have authority to act as the Owner's representative to approve changes that increase the Contract Sum or the Contract Time. As used herein the term Owner means the Owner or the Owner's authorized representative as set forth herein.

§ 2.1.2 It shall be distinctly understood that by virtue of this Contract, neither the Contractor nor any contractor, subcontractor, sub-subcontractor, consultant, design professional, mechanic, material person, artisan, or laborer, skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the buildings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of the improvements are so erected, built, or situated. It shall be further understood that this Contract is not written for the benefit of third parties nor shall it be construed to create any third party beneficiaries.

§ 2.1.3 The presence of the Owner or Owner's representative at the Work Site does not imply acceptance or approval of the Work by the Owner.

§ 2.1.4 The Owner, as a governmental entity under the laws of the State of Texas, must have funds in the full amount of the Contract on hand prior to award and execution of the Contract. Moreover, no Contract exists between the Owner and the Contractor until the formation of the Contract is approved and ratified by a majority of the Board in open session at a duly noticed and held Board meeting as required by law and in compliance with Board Action 2016-10-9 and the Contract is signed by an authorized representative of the Owner.

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§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Upon written request of Contractor, Owner shall provide reasonable evidence that funds have been appropriated for the project in accordance with Texas law.

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

§ 2.2.3 If requested by the Contractor, the Owner shall furnish surveys describing physical characteristics, legal limitations, utility locations, and legal description for the Site of the Project. The Contractor shall be entitled to rely on the accuracy of information provided by the Owner but shall exercise proper precautions relating to the safe performance of the Work and shall independently determine the location of all utility lines before beginning the Work..

§ 2.2.4 Information or services reasonably necessary for the Work and under the Owner's control shall be furnished by the Owner with reasonable promptness upon written receipt by the Contractor requesting such information. Under normal circumstances, fourteen (14) days will be considered a reasonable time for Owner to respond unless there is a critical need for an earlier response and the Contractor notified the Owner of the critical need in its written request. In any instance where information or services from the Owner is required, Contractor shall promptly notify the Owner in writing, with copy to the Owner's representative, of the particular need. Absent such notification, any Claim based upon lack of information or services shall be waived.

§ 2.2.5 The Contractor will be furnished free of charge, 10 copies of the Drawings and Specifications for the execution of work. The Contractor shall pay actual reproduction costs of any additional copies required.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Moreover, this section in no way limits the Owner's rights to terminate pursuant to Article 14 of these General Conditions. Notwithstanding anything in the foregoing to the contrary, to the extent possible and assuming no emergency or dangerous situation exists, in which event Owner may stop work immediately, Owner shall furnish Contractor with at least seven (7) days prior notice of Owner's intention to stop the Work so that Contractor may have an opportunity to commence to remedy the alleged default which is described in said notice. Except as set forth herein, Owner shall not stop the Work provided Contractor satisfactorily commences to remedy the default within seven (7) days of said notice.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three (3) day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies; provided, however, that the Owner shall be entitled to take remedial and other necessary action in an emergency without waiting for such three (3) day period. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including, but not limited to, Owner's expenses and compensation for any consultants services made necessary by such default, neglect or failure. If, at the time the first written notice is delivered to the Contractor, the contracted time for performance has already been exceeded, a second notice shall not be required. If the correction of the deficiencies has not commenced within seven (7) working days after the Contractor has provided access that would allow initiation of the Work or the Contractor has failed to provide a reasonable plan of action to correct such deficiencies,

the Owner shall have the right to correct the Work and to deduct from the Contract Sum Owner's costs made necessary by such default, neglect, or failure.

After the Work or any portion thereof has stopped prior to final completion, the Owner may make necessary emergency repairs to the Work if necessary to prevent further damage if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if the reason for the repairs is defects in the work provided by the Contractor or any of Contractor's consultants, Subcontractors, Sub-subcontractors, suppliers, or materialmen. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 OWNER'S LACK OF LIABILITY TO THIRD PARTY

§ 2.5.1 The Owner is not responsible for the acts and/or omissions of, or contractually involved with, any subcontractors, suppliers of labor or materials, and/or their respective employees or agents or any other third-party claimants. Such claimants shall not constitute third party beneficiaries under this contract. The Contractor and/or his Surety solely shall deal with, take responsibility for, and be liable to such parties under this Contract.

§ 2.6 OWNER'S RIGHT TO OCCUPY THE PROJECT

§ 2.6.1 The Owner shall have the right to occupy or use without prejudice to the right of either party, any completed or largely completed portions of the project, notwithstanding the time for completing the entire work or such portions may not have expired. Such occupancy and use shall not constitute acceptance of any work not in accordance with the Contract Documents.

§ 2.6.2 If such prior use delays the completion of the Project, the Contractor may request an extension of time, claim for which shall be made in writing with supporting data attached.

§ 2.6.3 Refer to Article 11 - Insurance and Bonds regarding property insurance requirements in the event of such occupancy.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents in a good and workmanlike manner and in an expeditious and economical manner consistent with the interest of the Owner; shall exercise the degree of care, skill, and diligence in the performance of the Work in accordance with and consistent with industry standards for similar projects; shall utilize its best skill, effort, and judgment in diligently performing the Work; and shall furnish efficient business administration and supervision. Workmanship shall be of a quality to produce satisfactory results. This shall include, but not be limited to meaning, that all materials shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform, and joining of materials shall be flush and level, unless otherwise directed by the Owner or the Contract Documents.

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

§ 3.1.4 The Contractor must be fully qualified under any state or local licensing laws for Contractors in effect at the time and at the location of the work. The Contractor is responsible for determining that all of his subcontractors and prospective subcontractors are duly licensed in accordance with the law.

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. Any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional. In beginning each portion of the Work, the Contractor represents that it has visited and carefully examined the Site and its surroundings and satisfied itself as to the condition of all circumstances affecting the Site and the Work. The circumstances evaluated by Contractor are the location and nature of the Work; generally prevailing nature of the geotechnical, ground, and subsoil; and the form and nature of the Site. The Contractor further represents that it has familiarized itself with the local conditions under which the Work is to be performed, the location and character of existing or adjacent work or structures, the Contract Documents, the extent and nature of the Work and materials necessary for carrying out and completing the Work, the general character and accessibility of the Site, the applicable laws (including labor laws), and the accommodations the Contractor may require. Contractor further represents that it has correlated its visible observations with the requirements of the Contract Documents; and subject to the right to rely upon specific information as may be set forth herein, has assumed the risk of such visible conditions. The Contractor shall not, except as expressly provided in the Contract Documents, be entitled to any extensions of the Contract Time or to any adjustment of the Contract Sum on grounds of misinterpretation or misunderstanding of any such matter, nor shall it accept, except as provided in the Contract Documents, be released from any of the risks accepted or obligations undertaken by it under the Contract Documents. Furthermore, in the event that Contractor relies upon such information, the Contractor may not rely upon such information when it knows or reasonably should have known that the information is inaccurate, inadequate, incomplete, or otherwise unfit for its intended purpose, or would infringe the intellectual property rights of third parties. Notwithstanding the foregoing, the Contractor shall not be responsible for evaluating the geotechnical conditions at the site, nor ensuring that the design documents are consistent with or compliant with the recommendations of any geotechnical engineer.

§ 3.2.3 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any non-conformity discovered by or which was made known to the Contractor, shall be reported promptly to the Owner.

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor its warranty, it shall promptly notify the Owner in writing, providing substantiation for its position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification. If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Owner in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents.

§ 3.2.5 The Contractor shall not be entitled to additional compensation for the "rework portion" of any additional work caused by his failure to carefully study and compare the Contract Documents prior to execution of the Work.

§ 3.2.6 The Contractor shall make a reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observation of work prior to the

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Contractor's field superintendent's personal inspection of the work and his determination that the work complies with the Contract Documents. The Contractor shall arrange meetings prior to commencement of the work of all major subcontractors to allow the subcontractor to demonstrate his understanding of the documents to the Architect and to allow the subcontractor to ask for any interpretation he may require.

§ 3.2.7 If, in the opinion of the Architect, the Contractor does not make a reasonable effort to comply with the above requirements of the Contract Documents and this causes the Architect or his Consultants to expend an unreasonable amount of time in the discharge of the duties imposed on him by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to Articles 3.2.5, 3.2.6, and 3.12 before additional services are performed.

§ 3.2.8 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his warranty, he shall promptly notify the Architect in writing, providing substantiation for his position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate modification.

§ 3.2.9 Prior to placing any concrete floor slabs, the Contractor shall submit plan and section drawings, at a scale of 1/4 inch = 1-0 inch, of each mechanical room to the Architect. These drawings shall be fully dimensioned showing all equipment piping, ductwork, electrical panels and devices, and structure, noting particularly the clearances proposed for each item. The Contractor shall make all corrections noted by the Architect and resubmit the drawings until noted "Approved" by the Architect to ensure coordination among the trades. Once approved, the Contractor may begin work on the floor slabs.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor undertakes performance of the services and the Work as an independent contractor. Nothing herein shall create a relationship of employer and employee, joint venture, or partnership between the Owner and the Contractor, its agents, representatives, employees, consultants, the Owner or Subcontractor, for any purpose whatsoever. Nothing herein shall create a relationship of principal and agent between the Owner and the Contractor, its agents, employees, representatives, consultants, Owner, or subcontractor. Neither party shall have the authority to bind or obligate the other as a result of the relationship created hereby. As an independent contractor, the Contractor: (a) shall provide supervision of the Contractor's agents, employees, and consultants; and (b) agrees to perform all of the Contractor's obligations under this Contract in accordance with the Contractor's own methods subject to compliance with this Contract. 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 portion of the Work under the Contract. Any direction or instruction by the Owner or any of the Owner's authorized representatives shall be considered to have been given exclusively as evidence of the Owner's desire to obtain certain results from the Work, and shall in no way affect the Contractor's status as an independent contractor. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. However, if the Contractor determines that such means, methods, techniques, sequences, or procedures specifically and expressly contained in the Contract Document may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall have the right to not proceed with that portion of the Work without further written instructions from the Architect. If the Owner or Architect instructs the Contractor to proceed with the specific expressly stated required means, methods, techniques, sequences, or procedures, over his objections and without acceptance of any changes proposed by the Contractor, the Contractor shall not be responsible for any resulting loss or damage.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, consultants, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

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

§ 3.3.5 Collin College is a tobacco-free environment. No tobacco products will be allowed on the property at any time. The Contractor shall post signs, in both English and Spanish, at all entrances notifying all employees, subcontractors, and suppliers of this. The Contractor shall take all necessary steps to ensure adherence to this policy.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 Substitutions and alternates may be rejected by the Owner without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) and when in the judgment of the Owner, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 The Contractor must submit to the Owner (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the time of completion of the Work and the construction schedule; and (iv) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings; and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Owner. Proposals for substitutions shall be submitted in triplicate to the Owner in sufficient time to allow the Owner no less than twelve (12) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Furthermore, upon Owner's instruction, Contractor may not use any employee, subcontractor, supplier or vendor in the performance of the Work to whom the Owner makes a reasonable objection. Furthermore, upon Owner's instruction, Contractor may not use any employee, subcontractor, supplier or vendor in the performance of the Work to whom the Owner makes a reasonable objection. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES'

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NONCOMPLIANCE WITH IMMIGRATION LAWS OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4 Contractor and Contractor's consultants, subcontractors, sub-subcontractors, materialmen, and suppliers shall bear responsibility for compliance with all federal and state laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner does not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of its own conduct.

§ 3.4.5 Pursuant to Texas Education Code Section 44.034, Contractor must give advance written notice to the Owner if the Contractor or an owner or operator of the Contractor has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Contractor failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

§ 3.4.6 Contractor will, at least annually, obtain criminal history record information that relates to an employee, applicant, agent or Subcontractor of the Contractor or a Subcontractor, if the person has or will have continuing duties related to the Project, and the duties are or will be performed on Owner's property or at another location where students are regularly present. Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony or a misdemeanor involving moral turpitude, from Owner's property or other location where students are regularly present. Owner shall determine what constitutes "moral turpitude" or "a location where students are regularly present".

§ 3.5 WARRANTY

(Paragraph deleted)

§ 3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse by the Owner, modifications not executed by the Contractor, improper or insufficient maintenance, unless such maintenance is the Contractor's responsibility as provided for in the Contract Documents, improper operation, or normal wear and tear and normal usage, but only to the extent such exclusions occur after Owner has taken occupancy of such portion of the Project. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Upon written notice from Owner, Contractor in a manner acceptable to Owner may (a) repair or replace the defective Work, or (b) re-perform defective Services in conformity with the Contract Documents. Owner must promptly report any failure of the Work to Contractor in writing. Except for defect caused by a failure of an equipment warranty that is assignable to the Owner, this warranty of Contractor to repair or replace the defective Work as set forth in this Section 3.5.1 or to re-perform defective Services is not assignable.

§ 3.5.2 Contractor shall certify that the Project has been constructed in general conformance with the Architect's or Engineer's plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Contract Documents. Contractor shall fully complete a "Certification of Project Completion" as required by 19 Texas Administrative Code section 61.103(c)(3)(F). In the event of failure of materials, products, or workmanship, either during construction or the warranty period (which shall be one (1) year from the Date of Substantial Completion, except where a longer period is specified), the Contractor shall take appropriate measures to assure correction or replacement of the defective items, whether notified by the Owner or Architect. Items of work first performed after Substantial Completion shall have their warranties extended by the period of time between Substantial Completion and the actual performance of the Work."

§ 3.5.3 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of:

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- .1 an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or
- .2 an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with applicable standards; or
- .3 such further reasonable proof as is required by the Architect.

§ 3.5.4 In the event an item under warranty fails, the Contractor shall extend the original warranty period by a length of time equal to the elapsed time which occurs from the notification in writing by the Owner or a warranty claim until acknowledgement by the Owner that the claim has been resolved. Warranties shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy defects as covered by Contractor's warranty. If Contractor does not respond to Owner's written notice, either by beginning corrective work or notifying Owner in writing regarding when corrective work will begin, within ten days of Contractor's receipt of Owner's written notice, then the Owner may take measures to correct the Work and Contractor will be obligated to reimburse Owner's costs. If notice of defects covered by Contractor's warranty is given in writing to the Contractor on a timely basis, then the obligation to provide the warranty work may extend until the warranty defect is remedied and accepted by the Owner. The provision of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

§ 3.5.5 In the event of failure of materials, products, or workmanship, either during construction or the warranty period (which shall be one (1) year from the Date of Substantial Completion, except where a longer term is specified), the Contractor shall take appropriate measures to ensure correction or replacement of the defective items, when notified by the Owner.

§ 3.5.6 To the extent provided and allowed, the Contractor agrees to assign to the Owner, prior to Final Completion of the Work, any and all manufacturers' warranties relating to materials and labor used in the Work and agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties. All warranties and forms will be required to be submitted prior to Final Payment.

§ 3.5.7 Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranty on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner. Prior to termination of the warranty period and upon request by the Owner, Contractor shall accompany Owner on reinspection of the Work in the Project and Contractor shall be responsible for correcting any warranty items that are observed or reported during the warranty period. Contractor shall prosecute such warranty work without interruption until accepted by Owner, even though such work should extend beyond the warranty period. If Contractor fails to provide the schedules to Owner, Contractor's warranty obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.

§ 3.5.8 The warranties of Contractor provided in Section 3.5.1 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Contract Documents. Contractor shall issue in the Owner's name all manufacturers' warranties for all equipment furnished by Contractor under this Contract and Contractor shall take no action or fail to act in any way that result in the termination or expiration of such third party warranties or that otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

§3.5.9 Approximately eleven (11) months after Substantial Completion, the Contractor shall accompany the Owner and Architect on a complete reinspection of the Project and be responsible for correcting of all additional deficiencies observed or reported.

§ 3.6 TAXES

§ 3.6.1 The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of

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the Limited Sales, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall issue Certificates of Exemption to its Subcontractors and suppliers in lieu of said taxes for all such materials and supplies and shall obtain Certificates of Resale from Contractor suppliers. Failure of Contractor to issue Certificates of Exemption or to obtain Certificates of Resale from Contractor suppliers shall make the Contractor responsible for absorbing the tax, without compensation from Owner.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. All connection charges or inspection fees as may be imposed by any municipal agency or utility company are included in the Total Contract Sum and shall be the Contractor's responsibility. Assessments and usage fees are the responsibility of the Owner.

§3.7.1.1 The Owner will pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges unless specifically indicated otherwise herein. Verify discrepancies, if any, prior to submitting a competitive sealed proposal.

§3.7.1.2 The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, inspection fees, and plan checking fees; temporary utility charges, tap charges, water meter charges, and any other similar fees assessed by jurisdictional authorities having control over this project, except wastewater impact fees and water impact fees, which are paid by Owner.

§3.7.1.3 Fees payable to the Texas Department of Licensing and Regulation (TDLR) for document review relative to the Elimination of Architectural Barriers Act will be paid by the Owner and the Architect will submit the documents to the TDLR for review and approval.

§3.7.1.4 The Contractor shall not be granted any extra compensation for not being able to start construction while awaiting the issuance of a building permit.

§ 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds, other than long-term maintenance bonds, required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, traffic control, parking meter removal, and other similar matters as may be necessary or appropriate for the performance of the Work.

§ 3.7.3 If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules, and/or regulations, the Contractor promptly shall notify the Owner in writing, and necessary changes may be accomplished by appropriate Modification upon Owner's written request. However, if such variances are due to a change in the law, statutes, ordinances, building codes, rules, and/or regulations after execution of the Agreement, then Contractor may seek an increase to the Contract Sum for actual costs incurred and/or Contract Time for actual time lost as provided under the Contract that are directly attributable to changes required as provided in this Section 3.7.3.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents and could not reasonably have been discovered through visual inspection on the site as required under this Contract; or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if

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the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of or revising of services to the Project. The Contractor shall inform the Owner at once when the Owner's participation is required. The cost for temporary utilities is the responsibility of the Contractor, only if it is determined a new service is necessary. If the Contractor ties into existing Owner utilities, the cost for connection is the responsibility of the Contractor and the utility usage cost is the responsibility of the Owner. The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities. All of the foregoing expenses paid by the Contractor shall be considered Costs of the Work.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. See Specifications Section 01 21 00 Allowances.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in contractor's costs under Section 3.8.2.2.

(Paragraph deleted)

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Such superintendent shall remain full-time on the Project until all items of the punch list are completed and accepted by the Owner. Prior to execution of the Contract, the Contractor shall furnish a list to the Owner of all consultants, job-site superintendent(s), Subcontractors, and suppliers involved in the Project. Notwithstanding the foregoing, Contractor shall keep on the job the superintendent approved by Owner who shall not be transferred from the Work without Owner's consent (which shall not be unreasonably withheld). However, such obligation to furnish the superintendent shall not be construed (1) to preclude the promotion within Contractor's organization of any person assigned to Work, or (2) to give rise to any liability of Contractor if any person assigned to the Work leaves Contractor's employ. If Owner reasonably determines that any employee of Contractor or of its Subcontractors is careless, not qualified to perform the Work assigned to him, incompetent,

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insubordinate, or acts in violation of any provision of these Contract Documents, and Owner and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employees, the Contractor shall promptly remove such employee from the Work and replace such employee. All times while activities are being performed in Contractor's office, Contractor shall appoint an individual (approved by Owner, acting reasonably) authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times, and who shall be authorized to receive the instructions, requests, and decisions of Owner. All of Contractor's and Subcontractor's personnel shall comply with all applicable health, safety, and loss prevention rules of applicable authorities. Contractor shall, at its own expense, remove from the Work any person who fails to comply with such rules and instructions in any material respect.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. The superintendent shall remain on site until all punch list items have been corrected and signed off by Architect.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 If the bid documents contain a Project schedule setting out the beginning and ending of construction, or if there are any other limits on the time of performance set out in the Contract Documents, the Contractor, promptly after being awarded the Contract, shall develop a construction schedule reasonably defining a plan for completing the Work within the required time. The format and detail of the schedule shall be in keeping with the size and complexity of the Project and in conformity with the Contract Documents. The schedule and any updates thereof shall be subject to approval of the Owner. The schedule and any updates shall not exceed time limits current under the Contract Documents (including granted time extensions) and shall be revised at appropriate intervals as reasonably required by the Contractor, shall be related to the entire project (if more than one Contract is involved in the Project), and shall provide for expeditious and practicable execution of the Work. All updated schedules shall address the subject of how the Contractor intends to overcome any delays previously encountered.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 The Contractor shall submit to the Architect with each monthly Application for Payment, a copy of the progress schedule showing all modifications required to have the schedule reflect appropriate revisions and shall take whatever action is necessary to assure that the project completion schedule is met.

§ 3.10.5 The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of a Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents. The construction schedule shall be in a detailed format satisfactory to the Owner and also shall:

- .1 provide a graphic representation of all activities and events that will occur during performance of Work;
- .2 identify each phase of construction and occupancy; and

- .3 set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as Milestone Date).

If not accepted by the Owner, the Contractor promptly shall revise the construction schedule in accordance with the recommendations of the Owner and re-submit the construction schedule for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and promptly shall advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these General Conditions as progress reports) as set forth in Section 3.10.1 or if requested by the Owner. In the event any progress report indicates any Contractor caused delays and Contractor is responsible for such delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.6 The Owner shall have the reasonable right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The Contractor's shall keep these documents and have them available at the Site during all times Work is being performed.

§3.11.2 The Contractor shall post all Addenda on Construction Documents prior to commencing work in the site

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

- .1 If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the

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Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent resubmittal. Additional service charges as outlined in 3.2.6 may be charged by the Architect in this event.

- .2 The Architect will take no action on Shop Drawings, Product Data, and Samples that have not first been certified, by stamped, signed notation, as having been checked and approved by the Contractor for use in the Work, or that are not specifically required by the Contract Documents.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been accepted by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's acceptance of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's acceptance thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's acceptance of a resubmission shall not apply to such revisions.

- .1 Deviation from the requirements of the Contract Documents indicated on shop Drawings, Product Data, and Samples, does not constitute the required notification "in writing".

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Contractor shall submit complete Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least 14 days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, submit all Samples in adequate

time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall be submitted to the Architect within three (3) weeks of the date of the contract for construction.

§ 3.12.12 The Contractor shall submit the number of copies of Shop Drawings, Product Data, Samples and similar submittals which the Contractor and his subcontractors need for their use plus two additional sets for the Architect and one additional set for each of the Architect's consultants involved with the particular section of work. Where shop drawings are involved, submit one high quality reproducible transparency and one opaque print of the shop drawing for the Architect plus one additional opaque print for each of the Architect's consultants involved with the particular section of work. The reproducible transparency will be marked by the Architect and/or his consultants and returned to the Contractor for his use, distribution, correction or resubmittal as required. The marked up prints will be retained by the Architect and his consultants. After final review and correction of the submittal, the Contractor shall send two corrected sets to the Architect, and one to the Architect's consultants involved with the particular section of work.

§3.12.13 In accordance with the requirements of Texas House Bill No. 1927 and Senate Bill No. 509, the Contractor must submit a material safety data sheet for all materials or parts before installing them in the project.

§3.12.14 The Contractor shall provide composite drawings within two months of contract signing, showing how all piping, ductwork, lights, conduit, equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturers, code, or in keeping with good construction practice. Space for all trade elements must be considered on the same drawing. Drawings shall be at 1/4 inch per foot minimum scale and shall include invert elevations and sections required to meet intended purpose.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. When the Work is to be performed at an existing location in which instructional classes and activities are conducted and ongoing, Contractor shall schedule and perform the Work in a manner that does not compromise the safety to students, faculty, and staff, and does not unreasonably disrupt or interfere with the continuing normal routine of the college. Contractor will perform the work so as not to interfere with classes and the operation of Owner's adjacent buildings and comply with any reasonable requests of Owner to make adjustments to avoid adversely affecting college operations at or near the site. The Contractor will abide by all applicable policies, rules, and regulations of the Owner with respect to conduct, including smoking, access to the Project Site, parking of vehicles, tree preservation, and entry to any adjacent facilities that are owned by the Owner.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project Site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project Site. Reasonable protection of construction material and equipment stored at the Project Site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.13.3 Except as may be set forth herein, the Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project Site without the prior written consent of the Owner.

§ 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. Without limitation of any other provision on the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of:

- .1 any area and buildings adjacent to the Site of the Work, or
- .2 the building in the event of partial occupancy.

§ 3.13.5 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrance, and parking areas other than those designated by the Owner. Without limitation of any other provision of the Contract Documents, the Contractor

shall use its best efforts to comply with all rules, regulations promulgated by the Owner in connection with the use and occupancy of the Project Site and the building, policies, and procedures, as amended from time to time.

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Owner.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor or any of his Subcontractors shall clean and restore such surfaces to their original condition. The Contractor shall be responsible for the protection of the Work, including damaged or broken glass caused by the construction operations.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Prior to the Owner's inspection for Substantial Completion, the Contractor shall repair or replace damaged Work; clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint, and foreign substances from all surfaces; including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean Site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the Site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

§ 3.15.4 At the completion of the Work, the Contractor shall remove from and about the Project materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials. The Contractor shall perform the following final cleaning at the completion of the Work:

- .1 Remove all temporary protections;
- .2 Remove any remaining marks, stains, fingerprints, and other soil or dirt from all surfaces and other Work;
- .3 Remove spots, mortar, plaster, soil and paint from ceramic tile, marble and other finish materials from all surfaces and other Work;
- .4 Clean fixtures, cabinetwork and equipment, removing stains, paint, dirt, and leave in an undamaged and new condition; and
- .5 Clean all surfaces and other Work in accordance with recommendations of the manufacturer.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but

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shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SHALL AND DOES AGREE TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS OWNER, AND ITS TRUSTEES, BOARD MEMBERS, OFFICERS, DIRECTORS, OFFICIALS, EMPLOYEES, SUCCESSORS AND ASSIGNEES (COLLECTIVELY, "THE INDEMNIFIED PARTIES") OF, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, PENALTIES, AND EXPENSES, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, BUT ONLY TO THE EXTENT ARISING OUT OF, CAUSED BY, OR RESULTING FROM ANY NEGLIGENT, WRONGFUL, OR TORTIOUS ACT OR OMISSION OF THE CONTRACTOR, CONTRACTOR'S SUBCONTRACTORS, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE THAT THEY CONTROL (COLLECTIVELY, "THE LIABILITIES"). IN THE EVENT OF FAILURE BY THE CONTRACTOR TO FULLY PERFORM IN ACCORDANCE WITH THIS INDEMNIFICATION SECTION, EACH OF THE INDEMNIFIED PARTIES, AT ITS OPTION, AND WITHOUT RELIEVING CONTRACTOR OF ITS OBLIGATIONS HEREUNDER, MAY SO PERFORM, BUT ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES, OR ANY OF THEM SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.1.

NOTHING HEREIN SHALL BE CONSTRUED AS REQUIRING CONTRACTOR OR ANY ONE FOR WHOM OR FOR WHICH CONTRACTOR IS LIABLE FOR FROM INDEMNIFYING, PROTECTING, DEFENDING, OR HOLDING THE INDEMNIFIED PARTIES HARMLESS FOR ANY CLAIM, DAMAGE, LOSS, CAUSE OF ACTION, SUIT, JUDGMENT, PENALTY, OR EXPENSE SOLELY ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE NEGLIGENT, WRONGFUL, OR TORTIOUS ACT OR OMISSION OF OR BREACH OF THE CONTRACT BY AN INDEMNIFIED PARTY.

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect. The indemnity obligation of the contractor set forth in this Section 3.18 is limited to the insurance coverage carried by the Contractor. Any deductible costs will be split between Owners and Contractor contingencies.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent

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necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.4 THE PROVISIONS OF THIS INDEMNIFICATION SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 TEMPORARY UTILITIES

The following Sections 3.19.1 through 3.19.7 shall be included in the Contract Sum.

§ 3.19.1 Water: The Contractor shall arrange temporary connections as required during the entire construction period.

§ 3.19.2 Electricity: The Contractor shall make the necessary arrangements and provide all temporary electrical services and lighting required during the entire construction period.

§ 3.19.3 Heat: The Contractor shall arrange for heat, including equipment, fuel, and attendance required during the Work. Before the permanent heating system is ready for use, the facilities provided for temporary heat shall be of a non-smudging type. The permanent heating system may be used for temporary heat when installed. Upon completion of the construction and before acceptance of the building, the Contractor shall repair any damage caused by such temporary use. When the outside temperature is below freezing, the inside of the building shall be maintained at or above 40 degrees F, at all times, day and night. When painting or finish is in progress, the temperature shall be maintained at not less than 55 degrees F. The Contractor shall repair all damage caused by insufficient heat at Contractor's expense.

§ 3.19.4 Sanitary Arrangements: From the commencement to completion of the Work, the Contractor shall arrange for approved sanitary arrangements.

§ 3.19.5 Job Office: From the commencement to completion of the Work, if requested the Contractor shall provide for Owner's exclusive use a weather-tight office with operative windows, provided with heat and light, when necessary, with a table for using Drawings and Specifications and with approved means for filing same.

§ 3.19.6 Telephone: The Contractor shall provide at the job office a telephone that may be standard or cellular type. The telephone shall be installed, from the commencement of at the Site until the acceptance of the building.

§ 3.19.7 The Contractor shall provide and maintain a job sign produced by a commercial sign painter approximately 4' 0" x 8' 0", substantially constructed and braced, to be displayed in a prominent place to be seen from the most advantageous point, which shall be determined by the Owner, and so situated so that it will be free from possible damage and will not interfere with progress. Design for the sign shall be submitted to Owner for approval before printing or erection and shall contain the Project name at the top. The body of the sign shall contain the name of the Owner, the names of Owner's Board of Trustees, and the name of the Contractor, and at the Contractor's discretion, the name of the Contractor's Design Professional. Said job sign shall be included in the Cost of the Work.

§ 3.20 RESPONSIBLE RECORD DRAWINGS

§ 3.20.1 At the completion of the Project, the Contractor shall submit one (1) complete set of Dayrex film positive reproduces and one (1) set of blueprints changed to show all changes made during the proposal and construction. Drafting shall be of comparable quality as the original drawing and the Contractor shall pay the cost of the required REVIT drafting. The Contractor shall also provide an electronic copy of the record drawings in REVIT Release 2015 format on Compact Disc (C.D.). The electronic copy must be an updated copy of the drawings, not a scanned copy. Architect will provide electronic copy of documents for contractor's use. CD to contain electronic copies of all shop drawings, O & M Manuals, and Close Out Documentation.

§ 3.21 PREVAILING WAGE RATES

§ 3.21.1 No person employed by the Contractor or any of the Contractor's consultants or Subcontractors may be paid less than the minimum wage rate, as provided in Texas Government Code Chapter 2258. The Prevailing Wages as adopted by Owner as the general prevailing rates in the locality of the Owner for the classifications listed are attached as Schedule A to the General Conditions. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the rates

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show hereinafter. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates named.

§3.21.2 The attention of the Contractor and all Subcontractors is called to the following laws of the State of Texas relating to labor: Texas Government Code § 2258.001 et seq. In compliance with the cited law, the Contractor shall forfeit, as penalty to the Owner, sixty dollars (\$60.00) for each laborer, worker or mechanic employed, for each calendar day, or portion thereof, such laborer, worker or mechanic is paid less than the rates stipulated hereinafter for any Work done under this Contract by him or by any Subcontractor under him.

§3.21.3 Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

§3.21.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerned with labor, equal employment opportunity, safety and minimum wages.

§ 3.22 ANTITRUST VIOLATION

§ 3.22.1 To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract that may be under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. (1973). The Contractor shall include this provision in its agreements with each consultant, subcontractor, materialman, and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractor and suppliers.

§ 3.23 REPRESENTATIONS AND WARRANTIES

§ 3.23.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work that:

- .1 It is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 It is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 It is authorized to do business and in good standing in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it, over the Work, and over the Site of the Project;
- .4 The execution of the Contract and its performance thereof is within its duly authorized powers;
- .5 By submission of a proposal, it has carefully examined the plans, specifications, and the Site, and that from its own visual investigations, has satisfied itself as to the nature and location of the Work, the character, quality, and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions and all other materials which may in any way affect the Work or its performance; and
- .6 It acknowledges and understands that the Owner will make no allowance on behalf of the Contractor for any error or negligence on the part of the Contractor for not having visited the Site or not having thoroughly familiarized itself with all of the documents before submitting a proposal.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect. Except as herein expressly provided, the Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents by the activities or duties of the Owner, the Architect, or the Owner's representatives.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Neither the Owner nor the Architect will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect and Owner's Program Manager about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. The Owner may use a representative or agent to perform some of the administrative functions of the Project on behalf of the Owner. The Contractor; Architect; other design professionals and consultants; and the Owner and/or the representative or agent shall cooperate with each other in the performance of their respective functions. The management and reporting systems used by the Owner and/or the representative or agent, including the use of the representative or agent, may be changed by Owner during the Project.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. Architect and/or Contractor shall promptly notify, orally and in writing, the other party and Owner of any fault or defect in the Project or nonconformance with Construction Documents or the Contract Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no

duty to notify Owner of discoveries made or actions taken by Architect. Testing or inspections required by this subparagraph shall be conducted subject to the requirements of Chapter 44 of the Texas Education Code.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directive of the Owner's approval and execution in accordance with the Construction Documents and the Contract Documents, accompanied by all supporting documentation. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents, then the Architect may issue an order for a minor change in the Work, or recommend to the Owner that the requested change be denied. The Architect is not authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with

reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.3 Contractor promptly shall notify Owner and Architect of any material defaults by any Subcontractor or Sub-subcontractor that may affect the progress of the Work.

§ 5.1.4 Notwithstanding any provision contained in this Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor, or other materialman or workman employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner, Owner's property, or the Work or Project for the amount due from the Owner or the Contractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

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

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, actually and directly occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution. Prior to such change the Contractor shall notify the Architect of his intent and reasons for such proposed changes.

§ 5.2.5 The Contractor shall submit the list of proposed Subcontractors on Document AC2. The Contractor may obtain blank copies from the Architect.

§ 5.2.6 The Contractor is required to visit the site and completely familiarize himself with the existing conditions prior to the proposal. No additional increase in the Contract amount will be provided when existing or known conditions require a certain amount of work to comply with the intent of the Contract Documents.

§ 5.2.7 The Contractor shall not sublet the Work as a whole. The approval of Subcontractors in no way relieves the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents.

§ 5.3 SUBCONTRACTUAL RELATIONS

(Paragraph deleted)

§ 5.3.1 By appropriate agreement, written for all subcontract agreements for principal portions of the Work or where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Nothing contained in this Article 5 shall be construed as creating any obligations on the part of the Owner to any Subcontractor or Sub-Subcontractor nor shall it permit any Subcontractor or Sub-subcontractor.

§ 5.3.2 Except as otherwise expressly approved in writing by Owner, Contractor shall (a) require all Subcontractors for principal portions of the Work to carry such insurance as is required of the Contractor under the Contract Documents, or such lesser amount approved by Owner for a particular Subcontractor; (b) obtain from such Subcontractors indemnities in favor of the Owner to the same extent as required of the Contractor under the Contract Documents for the Subcontractor's portion of the Work; and (c) obtain from such Subcontractors assignment of all intellectual property rights to the Owner to the same extent as required by Contractor under the Contract Documents. Contractor shall promptly inform the Owner in writing of any inability to comply with the provisions of this section.

§ 5.3.3 To the extent not encompassed by Contractor's warranty provided hereunder, Contractor shall assign to Owner, from time to time as Owner may request, all assignable guaranties, warranties, and indemnities extended by any Subcontractor, Sub-subcontractor, materialman, mechanic, or vendor with respect to any work, materials, equipment, or services performed or furnished by the issuing party and forming a part of the Work to the extent allowed by such guaranties or warranties. Contractor shall use its best efforts to obtain assignable guaranties, warranties, and indemnities with respect to the Work.

§ 5.4 Intentionally left blank.

(Paragraphs deleted)

§ 5.5 RESPONSIBILITY

§ 5.5.1 Contractor shall be fully responsible for the performance of its consultants, subcontractors, sub-subcontractors, materialmen, and suppliers, including those referred or approved by the Owner. Nothing herein or elsewhere in the Contract shall be construed as requiring Contractor to engage any Subcontractor to which it has reasonable objection.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform other construction work, maintenance, and repair work, and school program operations at the Site and near the Site during the time period of the Work as long as such work is bid in compliance with Chapter 2269 subchapter F of the Texas Government Code. Owner may perform other work with separate contractors or forces at Owner's sole discretion. Owner shall have access to the building on the Site at all times.

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

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

§ 6.1.4 Intentionally left blank.

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 [Intentionally Deleted]

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work as set forth in Article 7 of these General Conditions. The Contract Sum and/or Contract Time may be increased for changes in the Work only if the provisions and requirements of Section 7 of these General Conditions are met.

§ 7.1.1.1 A field directive or field order shall not be recognized as having any impact upon the Contract Sum and/or Contract Time, and Contractor shall have no Claim therefore, unless it shall, prior to complying with the directive and in any event within ten (10) days of receiving the directive or such reasonable time thereafter, submit a change proposal to the Owner, and a Change Order is subsequently approved as provided in this Contract.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order.

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§ 7.1.4 The Contractor, upon receipt of written notification by the Owner of a proposed item of change in the scope of the Work, shall prepare as soon as possible a Change Proposal in such form or forms as directed by the Owner.

- .1 Each separate Change Proposal shall be numbered consecutively and shall include materials, costs, labor costs, fees, overhead and profit. The Proposal shall specify all costs related to the proposed Change in the Work, including any disruption or impact on performance to the extent known at the time of submission;
- .2 The Subcontractor's itemized accounting shall be included with the Change Proposal;
- .3 If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions, or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Owner;
- .4 Upon written approval of a Change Proposal by the Owner, the Owner will prepare a Change Order authorizing such change in the Work; and
- .5 The Contractor may request an increase in Contract Sum or an extension of Contract Time due to changes in the scope of the Work only at the time of submitting its Change Proposal. Contractor's failure to do so shall represent a waiver of any right to request a change in the time extension.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument initiated by the Owner and signed by the Owner and the Contractor for the reasons set forth in Subsection 8.2.2 and stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The parties mutually may agree upon a Change Order that adjusts Contract Time and/or Contract Sum based on a change in the Scope of Work requested by the Owner or that results from unanticipated, extraordinary adverse weather conditions as described in Article 15 of these General Conditions. The parties further agree that Contractor shall proceed with the Work only as set forth in a Change Order upon Contractor's physical receipt of a Change Order duly executed by the Owner.

§ 7.2.3 If a change in the Work is to be ordered, a written request shall be issued by Owner to Contractor describing the change and requesting the submission of a Change Order Request. When time does not permit the processing of a Change Order in advance of commencing the change in the Work, upon receipt of a written authorization from Owner, Contractor shall proceed with a change in the Work pursuant to a Construction Change Directive and Contractor shall concurrently proceed with submission of a Change Order Request.

§ 7.2.4 Within thirty (30) days following receipt of a written request, Contractor shall submit a Change Order Request to Owner together with the revised or new documents which, if approved, will become part of the Contract Documents setting forth any requested adjustment in the Contract Sum or the Contract Time, and including an itemization of all costs of material and labor with extensions listing quantities and total costs, and a substantiation of any Claim for an extension of the Contract Time. Any Change Order for a change in the Work must be signed by the Owner before the Owner is obligated for payment related to the Change Order. If Contractor is unable to submit the above information within the time limit, it shall notify Owner in writing, setting forth for Owner's approval a date by which Contractor will submit the information as well as a schedule for the performance of the Work for which a Change Order Request will be forthcoming. If within the 30 days the Contractor can not ascertain the financial or time impact of a claim a letter alerting the Owner of a forthcoming claim will suffice. This must be sent during this 30-day window.

§ 7.2.5 If Owner accepts a Change Order Request submitted by Contractor, Contractor shall prepare a Change Order that is based upon such Change Order Request for execution by Contractor and Owner and to the extent that the Owner and Contractor agree, the Contract Sum and Contract Time shall be adjusted as provided in the Change Order upon execution of such Change Order.

§ 7.2.6 Nothing contained herein shall limit the right of Owner to order changes in Work by Change Orders that have not been signed by Contractor, and Contractor shall promptly perform all Work required under the Contract

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Documents or a Change Order despite its failure to execute the Change Order. However, the Owner shall issue and execute a Change Order authorizing payment for all undisputed amounts.

§ 7.2.7 No change in the Work shall be the basis of an addition to the Contract Sum or a change in the Contract Time unless and until such change has been authorized by a Change Order executed and issued by the Owner in accordance with the Contract Documents. Changes in the Work may be made without notice to Contractor's sureties and absence of such notice shall not relieve such sureties of any of their obligations to Owner.

§ 7.2.8 Acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all Claims, whether direct or indirect, including but not limited to, impact or delay damages, arising from the subject matter of the Change Order; or attorneys fees and costs arising from a dispute with a Subcontractor over the Change Order.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3

(Paragraphs deleted)

The Construction Change Directive shall include the Owner's unilateral change in the Contract Time reflecting the Owner's reasonable view of the appropriate change in the Contract Time for the change in the Work covered by the Construction Change Directive. Until agreement is reached by the Owner and Contractor on these issues, the changes in Contract Time set out in the Construction Change Directive shall be used for scheduling purposes. Nothing herein shall be deemed a waiver of Contractor's right to dispute any Construction Change Directive.

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

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum, if any, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 In the absence of agreement between Owner and Contractor on the proper change to the Contract Sum or Contract Time because of a change in the Work, Contractor may treat the matter as a Claim under Article 15. In such event, the Contractor shall be entitled to recover only the amount by which it provides credible evidence that its direct costs have actually increased over the direct cost of performing the Work without the change in the scope of the Work. Direct costs shall be limited to the following:

- .1 Reasonable cost of labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;
- .2 Materials, supplies and equipment including cost of transportation, whether incorporated or consumed;
- .3 Rental cost of machinery and equipment, exclusive of hand tools, at rates that are no greater than market rates in the locale of the Work at the time of the Work;
- .4 Premiums for all bonds and insurance permit fees and sales, use or similar taxes related to the Work;

- .5 Cost of Subcontractor for performing the change in the Work. The amount allowable for Subcontractors shall be calculated using the same standards set out herein for direct Work by the Contractor; and
- .6 Additional costs of supervision and field office personnel directly attributable to and necessarily required for such charges.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree in writing with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

§ 7.5 Allowance balances may be used to fund changes in the work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances.

§7.5 ALLOWABLE MARKUPS FOR CHANGES IN THE WORK

§7.5.1 In Subparagraphs, 7.3.3 and 7.3.7 the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor for work performed by the Contractor's own forces, a maximum markup of ten (10) percent of that cost.
- .2 For the Contractor for work performed by the Contractor's Subcontractor(s), five (5) percent of the amount due to the Subcontractor(s).
- .3 For each Subcontractor or Sub-subcontractor involved, for work performed by that Subcontractor's or Sub-subcontractor's own forces, ten (10) percent of the cost.
- .4 For each Subcontractor for work performed by the Subcontractor's Sub-subcontractor, five (5) percent of the amount due the Sub-subcontractor(s).
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.7.
- .6 In order to facilitate checking of quotations for extras or credits, all competitive sealed proposals of Contractors, Subcontractors, and Sub-subcontractors, (except those so minor that their proprietary can be seen by inspection) shall be accompanied by a complete and detailed work sheet showing itemization of costs including labor, materials and other costs.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 Unless agreed otherwise, the date inserted on the Agreement form and the Date of Commencement of the Work shall be as follows:

- .1 The date inserted on the first page of the Agreement form will be the date the Owner formally awards the Contract. As soon as feasible after receipt of Proposals, the Architect will present Agreement forms to the Contractor for his review and signature; the Contractor will be allowed a maximum of five (5) days from the date the prepared Agreements are presented to him to 1) obtain the required bond forms and insurance certificates and 2) return the executed Agreement and supporting documents to the Architect for transmittal to the Owner for his final review and execution.
- .2 The Date of Commencement of the Work is the date that a written Notice to Proceed is delivered to the Contractor.

§ 8.1.3 The date of Substantial Completion and Final Completion are the dates certified by the Architect and approved by the Owner in accordance with Section 9.8 of General Conditions and Section 3.3 of the Agreement.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. The term "business day" shall mean a day on which the Owner's administrative offices are open for business and not a holiday as set forth in Chapter 662 of the Texas Government Code.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time is of the essence in performance of the Contract and time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed in performing Work that is critical to overall completion of the Work by an act or neglect of the Owner, or of a separate Contractor employed by the Owner, or by changes ordered in the Work, or unavoidable or unusual casualties, or unanticipated, extraordinary adverse weather conditions as described in Article 15, then the Contract Time shall be extended for a reasonable time as the parties may agree; provided that the delay in the performance of the Work was not caused by the Contractor or due to a delay within the control of Contractor. Adjustments in the Contract Time will be permitted for a delay only to the extent such delay is not caused or could not have reasonably been anticipated by the Contractor, and could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and only if Contractor satisfies the conditions of Article 7 and this Section 8.3. Contractor has the burden to prove that any of the foregoing alleged causes of delay impacted construction progress on the critical path.

Except as may be provided in Article 7 of these General Conditions, a time extension shall be Contractor's sole remedy for any such delay and in no event will Owner be liable to Contractor or any Subcontractor or any other person associated with the Work for any damages arising out of or associated with any delay, unless the delay arises in whole or in part due to the fault of the Owner or the Architect.

§ 8.3.2 Contractor shall submit in writing a request for all time extensions to which it believes itself to be entitled for the preceding month, other than time extensions for changes in the scope of the Work, which are to be submitted in accordance with the requirements of Section 7.2 of these General Conditions. If Contractor's request for time extension for Modifications in the Work is denied and Contractor wishes to pursue the matter, Contractor shall submit in writing a request for that extension. Any Claim for time extension not submitted under the terms of this section and in accordance with Article 15 shall be waived.

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§ 8.3.2.1 Owner shall grant time extensions to the extent it believes them to be proper. Time extensions granted by the Owner may be incorporated into schedules for completion of the Work. In the event that Contractor believes that it is entitled to additional time extension beyond those granted by the Owner, it may make a Claim, provided it can meet the requirements of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.2.2 The Schedule of Values shall be submitted on AIA Documents G702 and G703 Continuation Sheet, or a similar document using the same format if approved by the Architect, and shall include the following:

- .1 Costs for Contractor's fee, bonds and insurance, mobilization, etc., shall be listed as individual line items.
- .2 Costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items.
- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example; underground, major equipment, fixtures, installation of fixtures, start up, etc.)
- .4 Costs for subcontract work shall be listed without any addition of General Contractor's costs for overhead, profit or supervisions.
- .5 Where payment for stored materials may be requested prior to installation, material and labor shall be listed as separate line items.
- .6 Example pages from an approved Schedule of Values have been provided in Section 01 29 73.
- .7 Where work occurs at more than one building, for the Owner's accounting purposes and to facilitate the checking of the Contractor's Application for payment, costs shall be scheduled separately for each building on the G703 Continuation Sheets.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At the time specified in the Contract, the Contractor shall submit to Owner each Application for Payment, which shall be itemized and reflect operations completed in accordance with the Schedule of Values. Each application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage and must be accompanied by lien waivers from all Subcontractors, consultants, suppliers, and materialmen for the previous Application for Payment. The Contractor shall submit Applications for Payment in quadruplicate using AIA Document G702 and G703 Application and Certificate for Payment, 2009 Edition. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form.

§ 9.3.1.1 Payments will be made on account of materials or equipment incorporated in the Work and suitably stored at the Site or suitably stored at some off-Site location provided the following conditions are met for off-Site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety;
- .2 The location must be a bonded warehouse; and

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.3 The Contractor's Surety must agree, in writing, to each request for payment.

Payments for materials or equipment stored on or off the Site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured) and transportation to the Site for those materials and equipment stored off the Site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

§ 9.3.3 Upon payment by the Owner of the invoiced cost, Contractor shall ensure that title to all such materials and equipment shall irrevocably pass to the Owner. The Contractor warrants that title to all materials and equipment covered by an Application for Payment will pass to Owner upon the receipt of payment by the Contractor. Such title shall be free and clear of all liens, claims, security interests, or encumbrances. No work, material, or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained or an encumbrance is attached by the seller, the Contractor, or other party. **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.**

§9.3.4

Each application for payment must be accompanied by an updated construction schedule showing all activities and milestones. If the project is more than two (2) weeks behind schedule, Contractor must include his proposed plan for getting the project back on schedule.

§9.3.4.1 Progress Photos – Contractor to provide a minimum of ten (10) progress photographs of the project with every payment application, taken at the same location every time. Photographs will need to be submitted in print form and digitally with each application for payment. Provide construction photographs in accordance with section 01 33 00, submittals.

§9.3.5 By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmen's liens outstanding at the date of this requisition; 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; that except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; 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 performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Texas. Contractor further understands that

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falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Texas, including but not limited to, Texas Penal Code sections 32.46, 37.09 and 37.10, and may justify termination of Contractor's Contract with Owner.

§ 9.4 CERTIFICATES FOR PAYMENT

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation by Architect, subject to Section 9.4.3, that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect or Owner 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 or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including, but not limited to, loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 Defective Work not remedied after receipt of notice from Owner identifying such Defective Work;
- .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 timely and properly to Subcontractors or for labor, materials or equipment in accordance with Contractor's agreements with such parties;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum together with a detailed accounting supporting the Owner's conclusion;
- .5 Damage to the Owner or another contractor caused by Contractor;
- .6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 Persistent failure to carry out the Work in accordance with the Contract Documents after receipt of notice from the Owner identifying such failure.

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

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§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion within the date scheduled for Substantial Completion, subject to extensions of time allowed under the General Conditions, the Owner may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved. The Owner shall not be deemed in default by reason of withholding payment as provided for herein.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 Once each month, the Owner shall make a progress payment of undisputed amounts to the Contractor on the basis of a duly certified and approved payment application for the Work performed during the preceding month under this Contract. Owner's obligation to pay Contractor is a dependent covenant conditioned upon Contractor's satisfactory performance under the Contract. To insure the proper performance of the Contract, the Owner will retain five percent (5%) of the amount of each payment for the completed Work. All materials and Work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made, or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under this Contract.

§ 9.6.2 The Contractor shall, within ten (10) business days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work that are owed by the Contractor under and in conformity with the Contractor's contractual and/or legal obligations to such third parties, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments without cause within such time shall constitute a material breach of this Contract. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractor as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide copies to the Owner of such Subcontractor payments. Owner is not obligated to monitor payments to Subcontractors or Sub-subcontractors, and nothing in this section shall create any right on the part of a Subcontractor or Sub-subcontractor against Owner. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner. If the Owner becomes aware that Contractor is not current in its legitimate obligations to suppliers, laborers, and/or Subcontractors on the Project, Owner may (but is not obligated to) withhold payment until it receives reasonable proof from the Contractor that this situation no longer exists.

§ 9.6.3 The Owner may, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner shall have no obligation to pay or see to the payment of any money to a Subcontractor or Sub-subcontractor.

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum or such larger amount required by applicable law, payments received by the Contractor for Work properly performed

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by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Owner does not pay Contractor any undisputed amount that is due and owing under this Contract within fifteen (15) days of the date when it is overdue in accordance with Texas Government Code § 2251.021, then the Contractor may, upon ten (10) additional days' written notice or such time period established by Chapter 2251 of the Texas Government Code, whichever is later, stop the Work until payment of the undisputed amount owing has been received. The Contract Time shall be extended appropriately, by the Contractor's actual reasonable delay in shutdown and start-up and the Contract Sum shall be increased for any demobilization or remobilization costs.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, pursuant to the Contract, the Owner shall have a right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to:

- .1 Deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner; or
- .2 Issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 The Work as set out herein will not be considered Substantially Complete unless and until, as a condition to Owner's obligation to pay Contractor, and the term Substantial Completion shall mean that the performance of the work is to the point where (1) all Project systems included in the Work are operational; (2) as to such Work, all required governmental inspections and certification required of Contractor have been made and posted; (3) as to such Work, designated initial instruction described in the Contract Documents of Owner's personnel in the operation of systems has been completed; (4) as to such Work, all the required finishes set out in the Contract Documents are in place; (5) the Work can be used by the Owner for its intended purpose; (6) a final completion list has been prepared by Contractor and approved by Owner; and (7) lien waivers, and guarantees for Work completed to that date have been delivered to Owner. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be sole judge of the detailed list of items of Work to be completed or corrected at the date of Substantial Completion which list will be no longer than one or two typed pages.

The following items are a partial list of requirements, as applicable, to the Project, that must be completed **prior** to established Substantial Completion.

- .1 All fire alarm system components must be completed and demonstrated to the Owner.
- .2 All inspections by governmental authorities having jurisdiction over the project must have been finalized, any remedial work required by them must have been completed, and Certificates of Occupancy, local fire marshal approval certificate and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect.
- .3 All exterior clean-up must be complete.
- .4 All final interior clean-up must be complete.
- .5 All HVAC air and water balancing must be complete and final report corrections executed.
- .6 All Energy Management Systems must be complete and fully operational and demonstrated to the Owner.
- .7 All security systems including intrusion alarm system and closed circuit television systems must be complete, fully operational, and demonstrated to the Owner.
- .8 All campus communications equipment, telephone systems and P.A. systems must be complete and

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- demonstrated to the Owner.
- .9 All final lockset cores must be installed and all final Owner directed keying completed.
 - .10 All room plaques and exterior signage must be complete.
 - .11 All Owner demonstrations must be completed including kitchen equipment, HVAC equipment, plumbing equipment, and electrical equipment.
 - .12 A final certificate of occupancy must be signed by the Contractor and delivered to the Owner.
 - .13 All operation and maintenance manuals are delivered and approved ("D-slant" ring binders in triplicate) by architect and/or engineer.
 - .14 All record drawings are delivered and approved.
 - .15 MSDS sheets.
 - .16 All emergency/standby generator and low voltage lighting control systems must be complete, fully operational and demonstrated to the Owner.

In order to initiate and facilitate the preparation of the Contractor's list of items to be completed or corrected (Punch List), the Architect, if requested by the Contractor, will inspect a few representative rooms with the Contractor's superintendent and office project manager to assist the Contractor in the preparation of the Contractor's punch list. The Contractor's superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and shall personally inspect each and every item himself before certifying to the Architect that listed items have been corrected. Should the Architect determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned to the Contractor for revision and the inspection for determining the date of substantial completion on the work, the Contractor's superintendent shall accompany the Architect and his consultants during their inspections and the preparation of their supplements to the punch list and the superintendent shall record or otherwise take note of those supplementary items. The Architect will endeavor to furnish to the contractor typed, hand lettered, written or recorded supplements to the punch list in a prompt manner; however, any delay in the Contractor's receiving said supplements from the Architect will not be cause for a claim for additional cost or extension of time as the Contractor's superintendent shall have been in attendance during the inspections of the Architect and his consultants and will have been expected to take his own notes.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Parties believe that the Work, or designated portion thereof, is substantially complete, the Owner in conjunction with the Contractor will prepare a proposed Certificate of Substantial Completion, which shall set forth the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance and the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. Warranties on any items, which are completed after the Substantial Completion date shall commence on the date of completion of such item.

§ 9.8.5 Thirty (30) days after completion of all incomplete work or correction of defective work as outlined in the Certificate of Substantial Completion, upon receipt of Consent of Surety, and upon the Owner's receipt of all Close-out documents as described in the Specifications, the Owner shall make payment of retainage, except for amounts required to be withheld pursuant to Texas Government Code 2253.

§ 9.8.6 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. The Contractor shall not be responsible for utility or insurance certificates in areas that have been accepted by the Owner. The Architect shall not unreasonably delay Certification of Substantial Completion if all requirements of Section 9.8.1 and any additional requirements for Substantial Completion in the Project Manual have been met.

§9.8.6 In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met:

- .1 All inspections by government authorities having jurisdiction over the project must have been finalized, any remedial work required by them must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect.
- .2 All work, both interior and exterior, shall have been completed and cleaned except minor items which, if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be sole judge of the detailed list of items of work to be completed or corrected at the date of substantial completion.

§9.8.7 After the date of Substantial Completion of the project as evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of 30 days (unless extended by mutual agreement or provision of the Contract) within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In the report of deficiency the Contractor and surety will be informed that, should correction remain incomplete for 15 additional days, the Owner will initiate action to complete corrective work out of the remaining contract funds in accordance with Article 14.2. Additional costs of the Owner, Architect, and other consultants incurred because of the Contractor's failure to complete the correction of deficiencies within 30 days after the date of Substantial Completion (unless extended by mutual agreement or provision of the Contract.) will be deducted from the funds remaining to be paid to the Contractor. Should corrective work following Substantial Completion require more than one reinspection after notification by the Contractor that corrections are complete, the cost of subsequent inspections shall also be deducted from funds remained unpaid to the Contractor.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under the Contract Documents and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect and Owner's Program Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

§ 9.9.4 In the event that Owner takes partial occupancy prior to Substantial Completion of the Project, Contractor shall obtain to the best of Contractor's ability an endorsement to Contractor's builder's risk policy to provide

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extended coverage for partial occupancy if Contractor's builder's risk coverage under the Contract Documents would not otherwise provide such coverage.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Architect or Owner will promptly make such inspection and, when the Owner notifies the Contractor that it finds the Work acceptable under the Contract Documents and finds the Contract to be fully performed, the Contractor will promptly issue a final Application for Payment stating that to the best of the Contractor's knowledge, information and belief, 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 Application for Payment is due and payable. The Contractor's final Application for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to Final Payment have been fulfilled. Final payment of all undisputed amounts shall be made by Owner in accordance with Owner's regular schedule for payments.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until and as a condition precedent to Owner's obligation to make the Final Payment and pay any retainage, the Contractor shall meet all the requirements of this Section 9.10.2 and shall submit to the Architect and Owner

- (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner,;
- (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (4) consent of surety to final payment;
- (5) other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.
- (6) Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706;
- (7) Contractor's Affidavit of Release of Liens, AIA Document G705A;
- (8) Consent of Surety to Final Payment, AIA Document G707;
- (9) Contractor's Guarantee – notarized;
- (10) Subcontractor's Guarantee – notarized;
- (11) Subcontractor's Lien Releases – notarized;
- (12) Three sets each of maintenance and instruction manuals bound in a 3" ring binder;
- (13) Intentionally left blank;
- (14) Final list of subcontractor (AIA Documents G805);
- (15) The documentation required under Sections 10.7, 10.8, and 10.9 of these General Conditions; and
- (16) Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index. If the Contractor has satisfied the requirements herein and if the Owner is satisfied that the Work has been fully performed in accordance with the Contract Documents, final payment, constituting the entire unpaid balance of the Contract Sum, including any retainage, shall be paid by the Owner to the Contractor thirty-one (31) days after Final Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion.

If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the

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Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of
(Paragraphs deleted)

Final Payment shall not constitute a waiver of any Claims by the Owner.

§ 9.10.5 Acceptance of Final Payment by the Contractor shall constitute a waiver of Claims by Contractor, except for any Claims then pending that comply with the requirements of Article 15.

§ 9.11 LIQUIDATED DAMAGES

§9.1 The work to be performed under this Contract shall be substantially completed in accordance with the schedule established in Section 01 11 00 – Summary of the Work, or as stipulated in the Contract Documents, whichever is earlier, or by such dates thereafter as may be established by any written extensions granted under Article 8 of the General Conditions. The parties hereto agree that time is of the essence to this Contract, and that the pecuniary damages that would be suffered by the Owner, if the Contractor does not substantially complete all work called for in the Contract Documents by the specified date, are of their very nature difficult of ascertainment. It is therefore expressly agreed that as part of the consideration inducing the Owner to execute this Contract, that the Owner will deduct from any final payment made to the Contractor a sum equal to \$1,000.00 per day for each and every calendar day beyond the agreed date which the Contractor shall require for substantial completion of the work included in this Contract. It is also expressly agreed that if the Contractor does not complete all punch list items within 60 days of submitting the punch list, the Owner will deduct from any final payment made to the Contractor an additional sum equal to \$500.00 per day for each and every calendar day beyond the 60 days given to the Contractor to complete the punch list items. It is also expressly agreed between the parties that in its sole discretion, the Owner may contact the Contractor's bonding company in the event that the Owner believes that its rights under the performance bond related to the Project may be invoked. It is further understood that the above-referenced sums per day are agreed upon by the parties as a fair estimate of the pecuniary damages that will be sustained by the Owner in the event that the work is not substantially completed within the agreed upon time or the punch list is not completed in a timely manner. These sums shall be considered as liquidated damages only, and in no sense shall be considered a penalty, said damage being caused by additional compensation to personnel, loss of interest on money, inconvenience, disruption of the educational environment, moving costs, loss of building use, and other miscellaneous increased costs, all of which are difficult of exact ascertainment.

Failure to complete and close-out project 60 days after Substantial Completion of each portion of Work as stated above will result in liquidated damages being assessed of \$500.00 per calendar day until close-out occurs.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract, and shall conform to all provisions of the "Manual of Accident Prevention in Construction," published by the Associated General Contractors of America, Inc., latest edition.

§ 10.1.2 Contractor's employees, agents, and Subcontractors and Sub-subcontractors shall not perform any service under this Contract 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.

§ 10.1.3 Contractor has adopted or will adopt its own policy to assure a drug and alcohol free workplace while performing the Work. Contractor will remove any of its employees from performing the Work any time there is

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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.

§ 10.1.4 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 or not the owner thereof has a permit for a concealed weapon.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, as a Cost of the Work, for all measures necessary to protect any property adjacent to the Project and Improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other Hazardous Substances (as hereinafter defined) or equipment or unusual construction methods are necessary, the Contractor shall give the Owner reasonable advance notice of the presence or use of such materials, equipment, or methods. Contractor shall be responsible for any Hazardous Substances Contractor or Contractor's employees, contractors, consultants, subcontractors, sub-subcontractors, materialmen, and suppliers use, store, or otherwise introduce to the Premises.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor or Contractor's employees, consultants, Subcontractors, Sub-subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under this Contract, except to the extent the damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Contractor or anyone for whom the Contractor is liable. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 When all or a portion of the Work is suspended for any reason, the Contractor shall do all things necessary to protect the Owner's premises and all persons from damage and injury.

§ 10.2.9 The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the work that cause death, personal injury, or property damage. In the event, that the Owner, the Architect, or any agent or representative of the Owner becomes a party to a lawsuit or other proceeding involving such accident or event or reasonably anticipates the filing of a lawsuit or institution of a proceeding involving such accident or event, the Contractor shall provide full details of the accident or event and any and all statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages occur, the Contractor shall report the event immediately by telephone or messenger to the Owner.

§ 10.2.10 The Contractor shall be responsible for the protection and security of the Work and the Project, until the receipt by the Contractor of written notification that the Substantial Completion of the Work has been accepted by the Board of Trustees.

§ 10.2.11 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 Contractor's obligations expressly exclude any Work or Services of any nature associated or connected with the identification, abatement, cleanup, control, removal or disposal of hazardous materials or substances, including but not limited to asbestos or PCBs. Owner represents that, to the best of its knowledge, there are no hazardous materials or substances in or on the Premises that will in any way affect Contractor's Work or Services. Should Contractor become aware of or suspect the presence of hazardous materials or substances, Contractor shall have the right to stop the Work or Services in the affected area immediately and notify Owner. Owner will be responsible for doing whatever is necessary to correct the condition in accordance with all applicable laws. To the extent permitted by law, Owner agrees to assume responsibility for claims arising out of or relating to the presence of Hazardous materials or Substances in or on the Premises existing or introduced prior to the commencement of construction. Notwithstanding anything in the Contract Documents to the contrary, Owner shall not be responsible for any Hazardous Materials or Substances used, stored, or otherwise introduced to the Premises by the Contractor or Contractor's employees, contractors, subcontractors, or other person over whom Contractor has responsibility or control under this Contract.

§ 10.3.2 Intentionally left blank.

§ 10.3.3 IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, AS PROVIDED FOR IN PARAGRAPH 3.18.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. When use or storage of explosives or other such Hazardous Substance or equipment at the Site is necessary for the Work, the Contractor shall give Owner a written request for same. No work shall proceed involving such storage or use unless approved in writing by the Owner.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are solely due to the Owner's fault or negligence.

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§ 10.3.6 Intentionally deleted.

§10.3.7 As part of the construction contract close out process, and prior to receiving payment of any of the retainage, the Contractor and certain of his subcontractors shall submit notarized statements pertaining to the above referenced hazardous materials. Refer to Section 01710, Closeout Procedures.

§ 10.4 EMERGENCIES

§ 10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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

§ 10.5 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

§ 10.5.1 Contractor shall submit to the Owner a letter addressed to the Owner certifying that, to the best of Contractor's knowledge, all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the Contractor. Final Payment shall not be made until this letter of certification has been received by the Owner.

§ 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM

§ 10.6.1 Prior to payment of retainage and Final Payment, the Contractor and each subcontractor involved with the potable water system shall furnish a notarized statement certifying that, to the best of their respective knowledge, the potable water system, as installed, is "lead-free."

§ 10.7 HAZARDOUS MATERIALS CERTIFICATION

§ 10.7.1 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification to Owner prior to Final Payment.

ARTICLE 11 INSURANCE AND BONDS

(Paragraph deleted)

§ 11.0.1 No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonable available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement.

§ 11.1.1 The Contractor and Contractor's Subcontractors shall purchase and maintain, in a company or companies licensed and admitted by the Texas Department of Insurance to engage in the business of furnishing insurance in the State of Texas, the types and amounts of insurance as set forth in the Agreement to protect it and the Owner from claims that may arise out of, or result from, the Contractor's operations under the Contract, whether such operations be by itself, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be

(Paragraphs deleted)

liable. All insurance companies shall have an "A-VIII" in Best's Rating Guide and shall be satisfactory to the Owner. Insurance to be provided under the Contract include the requirement that private entities performing work at the Site, and exempt from the coverage on account of number of employees or occupation, shall maintain voluntary

compensation coverage at the same limits specified for mandatory coverage for the duration of the Project. No Work will be commenced until all requirements of this Article have been approved by the Owner in writing. The Owner will be furnished an acceptable certificate of insurance, prior to the commencement of any Work.

§ 11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits or the limits required by law, whichever coverage is greater:

.1 Workers' Compensation:

- (a) State: Texas - Statutory
- (b) Applicable Federal - Statutory
- (c) Employer's Liability
 - \$100,000 per Accident
 - \$100,000 per Disease, Policy Limit
 - \$1,000,000 per Disease, Each Employee

.2 Comprehensive or Commercial General Liability (including Premises- Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Coverage):

- (a) Bodily Injury and Property Damage Combined:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 Aggregate
- (b) Products and Completed Operations shall be maintained for at least one year after Substantial Completion and certificates shall be filed annually with the Owner during this period of time:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 Aggregate
- (c) Property Damage Liability Insurance shall provide X, C, and U coverage.
 - \$500,000 Fire Damage
- (d) Broad Form Property Damage Coverage shall include Completed Operations.

.3 Contractual Liability:

- (a) Bodily Injury and Property Damage Combined:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 Aggregate

.4 Fire and Legal:

- (a) \$50,000

.5 Medical Expenses:

- (a) \$10,000

.6 Personal Injury and Adv. Injury:

- \$1,000,000 Each Occurrence
- \$2,000,000 Aggregate

.7 Business Auto Liability (including owned, non-owned and hired vehicles):

- (a) Minimum Limits: \$1,000,000 Combined Single Limit Each Accident

.8 Umbrella Liability Insurance:

- (a) Limits: \$5,000,000 over Property Coverage
- (b) The Umbrella shall provide coverage over the workers' compensation, comprehensive general liability, and comprehensive automobile liability.

The Owner and the Architect and all Consultants listed on the Title Page of the Project Manual shall be an additional insured on the Contractor's policy as to the subject job. Provision shall be included for Waiver of Subrogation in favor of Owner and Architect and his Consultants.

Coverages written on an occurrence basis shall be maintained without interruption from date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after Final

Payment. The coverage afforded under the general liability insurance shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work with copies of the complete policies furnished to the Owner upon request. Contractor and its Subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its Subcontractors are in force and the necessary certificates have been received by Owner and Owner has issued a written notice to proceed. A certificate evidencing continuation of insurance coverage through Final Completion and Final Payment shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

Proof of insurance shall be evidenced on 1) an original ACORD Certificate of Insurance 25-N (1/95) and 2) an original Supplemental Attachment for ACORD Certificate of Insurance 25-S (7/90), AIA Document G715-1991, a copy of which is bound herein, each with an original signature of the Authorized Representative. Policy exclusions and/or restrictions should be clearly explained on the Certificate or in an attached letter from the issuing agency. Blank areas on the Certificate should have "not covered" written across the printed areas when coverage is not provided.

§ 11.1.4 The Contractor's insurance coverage shall be primary insurance as respects the Owner, its officers and employees for damages caused by Contractor or any one Contractor is liable for. Any assurance of self-insurance maintained by the Owner, its officers, employees shall be in excess of Contractor's insurance and shall not contribute to it for damages caused by Contractor or any one Contractor is liable for. Policies shall be written on an occurrence basis.

§ 11.1.5 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, or agents. If Contractor fails to maintain any required insurance, the Owner, at its sole option and without incurring any further obligation to provide insurance, may take out insurance in such type and amount and to deduct the amount of the premium for such insurance from any sums due the Contractor.

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

§ 11.1.7 All workers on the Project Site must be covered by the required insurance policies of the Contractor or a Subcontractor.

§ 11.1.8 Contractor must certify in writing to Owner that Contractor provided workers' compensation insurance coverage for each employee of the Contractor employed on the Project and Contractor shall provide a certificate from each Subcontractor certifying that the Subcontractor provides workers' compensation insurance for each employee of the Subcontractor employed on the Project. The Contractor's certification must be received by Owner prior to commencement of the Work. The certificate from each Subcontractor must be received by Owner prior to each Subcontractor being allowed to work on the Project.

§ 11.2 OWNER'S LIABILITY INSURANCE

§11.2 The Contractor shall be responsible for purchasing and maintaining Owner's Protective Liability Insurance naming the Owner as insured with the stated limit to be per occurrence as primary limit (combined single limit, irrespective of whether occurrence consists of personal injury, death, property damage, or combination thereof). The policy shall cover the work to be performed for the Owner by the Contractor and all subcontractors. The definition of insured in the policy shall be endorsed to include officers, employees of the Owner, while acting within the scope of employment or function for the Owner with respect to the work performed by the Contractor; the project architect and his consultants, as listed in the Bidding Documents, shall also be included as additional

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insureds. The policy shall be written with the same company as the Comprehensive Commercial General Liability policy.

Limits: \$1,000,000

§11.2.2 Refer to subparagraph 11.1.4 for additional requirements that apply to this paragraph also.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

(Paragraphs deleted)

§11.3.2 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. This insurance is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment. Coverage of other perils shall not be required unless otherwise provided in the Contract Documents.

(Paragraphs deleted)

§11.3.3 The property insurance shall include an endorsement allowing Owner occupancy and the insurance shall not be altered on account of partial occupancy prior to final completion.

§11.3.4 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles.

§11.3.5 This property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

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

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

§11.3.8 A loss under the Contractor's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear. The Contractor shall pay

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Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§11.3.9 [Intentionally blank]

§11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner requires the Contractor to furnish payment and performance bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract in a total amount equal to 100% of the Contract Sum and in conformity with applicable law. All bonds shall be issued by a surety company licensed, listed, and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for the 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 a reinsurer does not exceed ten percent (10%) of the reinsurers capital and surplus. The performance bond shall also include an amount necessary to reimburse Owner its reasonable and necessary attorneys' fees (pursuant to Texas Local Government Code section 271.159) and litigation costs incurred in claims arising under the performance bond, and liquidated damages arising under the Contract Documents, in an amount not to exceed five (5) percent of the Cost of the Work. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. The Contractor shall deliver the bonds not later than the tenth (10th) day after the date the Contractor executes the Contract. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code section 3503.001 *et seq.* and Texas Government Code, Chapter 2253, or their successors. The surety company shall have a rating of not less than "A VII" according to the latest posted ratings or the A.M. Best Web Site, www.ambest.com. The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating, insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

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

§ 11.4.3 The Performance Bond Form and The Payment Bond Form included herein shall be executed and submitted to the Architect in duplicate prior to commencement of the work. The surety companies must be acceptable to the Owner and licensed admitted carriers in the State of Texas; and the companies must appear in a current Federal Treasury list as Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.

§ 11.4.4 Each bond shall be of penal sum equal to 100% of the Contract Price and shall be compatible with the provisions of the governing authority. The Contractor shall file copies of each bond with the county clerk and furnish the Owner with a file receipt. The bonds shall remain in force throughout the warranty period of the

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contract. The Work will not be started until the bonds and issuing companies have been accepted as satisfactory by the Owner. The original bonds will be delivered to the Owner with an authorized power of attorney attached.

§ 11.4.5 Claims must be sent to the Contractor and his Surety in accordance with Chapter 2253, Texas Government Code. The Owner will furnish in accordance with such Chapter, a copy of the Payment Bond as provided therein to claimants upon request. All claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his Surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

§ 11.4.6 It is distinctly understood that no mechanic, contractor, Contractor, materialman, vendor, artisan or laborer, skilled or unskilled, shall have, claim or acquire any lien upon the Project or any of the improvements in the Project, nor upon any of the land upon which the Project is located.

§11.5 WORKER'S COMPENSATION INSURANCE COVERAGE

§11.5 Definitions. The following terms as used in subsections 11.6 through 11.16 shall have the meaning set forth below:

Certificate of coverage ("certificate") -A copy of a certificate of insurance, a certificate of authority to self-insure issued by Texas Department of Insurance (TDI), or a coverage agreement TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

Duration of the Project -includes the time from the beginning of the Work on the Project until the Contractor's Work on the Project has been completed and accepted by the governmental entity.

Persons providing services on the Project ("subcontractor" in Texas Labor Code **406.096**) include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food-beverage vendors, office supply deliveries, and delivery of portable toilets.

§11.6 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.

§11.7 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the Contract.

§11.8 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

§11.9 The Contractor shall obtain from each person providing services on the Project, and provide to the governmental entity:

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

.2 No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

§11.10 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter

§11.11 The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

§11.12 The Contractor shall post on each Project Site a notice, in the text, form and manner prescribed by the TDI, 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.

§11.13 The Contractor contractually shall require each person with whom it contracts to provide services on the Project to:

- .1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all its employees providing services on the Project, for the duration of the Project;
- .2 Provide to the Contractor, prior to that person beginning work on the Project, a certificate showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
- .3 Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .4 Obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period. If the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- .6 Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .7 Contractually require each person with whom it contracts, to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

§11.14 By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, or other civil actions.

§11.15 The Contractor's failure to comply with any of these provisions is a breach of Contract by the Contractor that entitles the governmental entity to declare the Contract void if the Contractor does not remedy the breach written ten (10) days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from covering in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

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ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's and Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.4.1 Where nonconforming Work is found, the entire area of Work involved shall be corrected unless the Contractor can completely define the limits to the Owner's satisfaction. Additional testing, sampling, or inspecting needed to define nonconforming Work shall be at the Contractor's sole expense, and performed by a testing laboratory designated by the Owner if such services are reasonably required by the Owner. All corrected work shall be retested at the Contractor's sole expense.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitations with respect to any obligations that the Contractor might have under the Contract Documents. Nothing contained in this Section

12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of the Contract that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship that appear within a period of one (1) year from Substantial Completion of the Work hereunder; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract or defects in the Work.

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

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

§ 12.2.9 Contractor's express warranty set forth in this Article 12.2, including the warranty in Section 12.2.2.1, shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract, at law or in equity, for defective Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 This Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas without regard to its conflicts of law provision, and any disputes shall be resolved in a court of competent jurisdiction located in Collin County, Texas.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract as a whole, or in part, without written consent of the Owner."

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

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been served only if the writing is delivered in person to the office of the party set out on the first page of the Agreement or to such other address as has been previously clearly identified in writing by the addressee, or if delivered by mail or in form of electronic transmission to that office, with electronic confirmation of receipt, or sent by registered or certified mail to that address.

§ 13.4 RIGHTS AND REMEDIES

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

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. The Contractor shall give the Architect timely notice of when and where tests and inspections are required or advisable so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Owner's services and expenses shall be at the Contractor's expense. If such procedures for testing, inspection or approval under this Section 13.5 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. If such procedures for testing, inspection, or approval under Section 13.5 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's services and expenses, to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, subcontractors, suppliers, or bonding companies.

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

§ 13.5.5 If the Architect and/or Owner is to observe tests, inspections or approvals required by the Contract Documents, the Architect and/or Owner will do so promptly and, where practicable, at the normal place of testing.

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

§ 13.6 INTEREST

Undisputed Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due in accordance with Section 2251.025 of the Texas Government Code.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. Contractor waives all claims and causes of action not commenced in accordance with this Section 13.7. Any applicable statute of

limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not earlier than the date of Final Completion.

§ 13.8 EQUAL OPPORTUNITY

§13.8.1 During the performance of this Contract, the Contractor agrees as follows:

- .1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or age; and
- .2 The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, national origin or age. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the requirements of these non-discrimination provisions.

§ 13.9 CONTRACTOR ACCOUNTS, RECORDS AND INSPECTION

§ 13.9.1 At all times during the duration of the Project and for three years after the Final Completion of the Project, the Contractor shall maintain records, which shall include, but not be limited to, accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, and similar document); original estimates; estimating work sheets; correspondence, back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned; insurance rebates and dividends; job records, such as daily reports, diaries, and job meeting minutes applicable to the Project; payment and payroll records; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to any matters related to the Contract (including interviews with Contractor's personnel and Subcontractor's personnel). Payment and payroll records shall not be maintained at the Site.

§ 13.9.2 The Contractor's records, as described in Section 13.9.1 and as otherwise contained in the Contract, shall be open to inspection and subject to audit and reproduction by Owner at all times for the Owner's evaluation and verification of Contractor's (a) compliance with Contract requirements; (b) compliance with Owner's business ethics policies; and (c) compliance with provisions for pricing or Claims submitted by the Contractor or any of its payees. The Owner or its designee shall be afforded access to all of the Contractor's records pursuant to the provisions of this Article throughout the term of this Contract and for a period of three years after Final Payment or longer if required by law.

§ 13.10 CERTIFICATE OF NONSEGREGATED FACILITY

§ 13.10.1 This section is applicable to Contracts and Subcontracts exceeding \$10,000.00 that are not exempt from the provisions of the Equal Opportunity Clause.

§ 13.10.2 By the signing of this Contract, the Contractor signifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The undersigned agrees that a violation of this certification constitutes a breach of this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, Work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor further agrees that (except where it obtained identical certifications from proposed consultants for specific time period) it will obtain identical certifications from proposed Subcontractors prior to the award of a contract exceeding \$10,000.00 that are not exempt from the provisions of the Equal Opportunity Clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods): Notice to Prospective Subcontractors of requirement for certification of nonsegregated facilities. A

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certification of nonsegregated facilities, as required by the May 19, 1967 Order (32 FR 7439, May 19, 1967) on elimination of segregated facilities, by the Secretary of Labor, must be submitted prior to the award of a contract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.11.

§ 13.11 PREVAILING WAGE RATES

§ 13.11.1 [See Section 3.21]

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 Contractor may terminate the Contract for the following reasons:

- .1 The Work has been stopped for sixty (60) consecutive days because of court order, of act by any government authority having jurisdiction over the Work, or by order of Owner in accordance with the Contract Documents, provided that such stoppages are not due in whole or part to the acts or omissions of the Contractor, or any employee, consultants, Subcontractors, Sub-subcontractors, or any other person for whose acts or omissions the Contractor may be responsible;
- .2 Owner's failure to provide Contractor with any information, permits, or approvals that are Owner's responsibility under the Contract Documents that result in the Work being stopped for sixty (60) consecutive days even though Owner has not ordered Contractor in writing to stop and suspend the Work in accordance with the Contract documents;
- .3 Owner's failure to cure the problem as set forth in the Contract Documents after Contractor has stopped the Work; or
- .4 Owner has not made payment of undisputed sums due on an approved Application for Payment within the time to cure provided in the Contract.

§ 14.1.2 Upon the occurrence of an event set forth in 14.1.1 above, Contractor may provide written notice to Owner that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within a reasonable period of time after Owner's receipt of such notice. If Owner fails to cure, or fails to reasonably commence to cure, such problem, then Contractor may give a second written notice to Owner of its intent to terminate. If Owner fails to cure, or reasonably commences to cure, such problem within a reasonable period of time after such notice, then Contractor may declare the Contract terminated for default by providing written notice to Owner of such declaration. In such case, Contractor shall be entitled to recover from the Owner payment not yet made for Work actually and satisfactorily completed and accepted by Owner up to the point of termination and for actual proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery purchased prior to the time the event in Section 14.1.1 occurred upon payment by Owner of amounts paid for materials, equipment, tools and machinery under this Section 14.1.2, all title and rights to such items to transfer to Owner.

§ 14.1.3 Intentionally left blank.

§ 14.1.4 Intentionally left blank.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

(Paragraphs deleted)

§ 14.2.1 Owner may terminate the Contract for cause for Contractor's material breach of any provision of the Contract upon written notice to the Contractor specifying the provisions so breached. After receiving written notice of breach, Contractor shall have a reasonable period of time to cure the breach as may be permitted by the Owner. If the Contractor fails to cure or reasonably commences to cure the breach within the time period so prescribed, the Owner may declare the Contract terminated and may enter upon the premises and may take possession of all materials, equipment, tools, appliances, and other items that have been purchased or provided by payments to the Contractor for the performance of the Work and may complete the Work. All such materials, equipment, tools, appliances, and other items purchased by the Contractor as set forth herein hereby transfers, assigns, and sets over to Owner for all purposes only to the extent of receipt of payment from the Owner for such items.

§ 14.2.2

(Paragraphs deleted)

In the event of termination under Section 14.2, except for payment for Work satisfactorily performed in accordance with the Contract up to the date of termination, Contractor shall not be entitled to receive any further payments under the Contract. In addition to termination and any other remedies for breach or default that are provided under this Contract, including this Section 14.2, the Owner may pursue any other rights or remedies available to the Owner in equity or at law.

§ 14.2.3 If a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, the surety shall promptly remedy the default by completing the Contract in accordance with its terms and conditions, or by obtaining a bid or bids in accordance with its terms and conditions. At Owner's election, upon determination by the Owner and the surety of the lowest responsible bidder, the surety will complete the Work or will arrange for a Contract between such bidder and the Owner, and make available as Work progresses sufficient funds to pay the cost of completion less the balance of the Contract Sum, but not exceeding the penal sum of the bond and other costs and damages for which the surety may be liable under the bond. The phrase "balance of the Contract Sum" as used herein shall mean the total amount payable by the Owner to the Contractor under the Contract and amendments thereto less the amount previously paid by the Owner to the Contractor.

§ 14.2.4 Intentionally left blank.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause by giving Contractor thirty (30) days notice.

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

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

§ 14.4.3 In case of termination for the Owner's convenience, the Contractor shall be entitled to retain all sums of money theretofore paid to it under the Contract and shall be paid (a) any retainage with respect to Work performed; and (b) that portion of the Contract Sum for Work satisfactorily performed to the date of termination for which it has not yet received payment less any amounts that comprise that portion of the Contract Sum that are included in clause (a) and of this Section 14.4.3. Contractor shall not be entitled to overhead and profit or any other fee on Work not executed.

§ 14.5 BANKRUPTCY OF CONTRACTOR

§ 14.5.1 If the Contractor institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate the Contractor's ability to perform its obligations under the Contract. Accordingly, should such event occur:

- .1 The Contractor, its trustee or other successor, shall furnish, upon request of the Owner, adequate assurance of the ability of the Contractor to perform all future material obligations under the Contract, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- .2 The Contractor shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Contract within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

§ 14.5.2 If the Contractor fails to comply with its foregoing obligations, the Owner shall be entitled to request the bankruptcy court to reject the Contract, declare the Contract terminated and pursue any other recourse available to the Owner under this Article 14.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Owner and Architect shall not be liable to the Contractor for extended overhead due to extensions of time caused by weather.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal, unanticipated, and extraordinary (such as hurricanes, tornadoes, and flooding lasting more than 3 days) for the period of time and locale, could not have been reasonably anticipated, and had an actual adverse effect on the scheduled construction.

§ 15.1.5.3 No adjustment of any kind that increases the Contract Sum or the Contract Time shall be made due to any hindrances or delays from any cause that is the fault of Contractor, or Contractor's consultants, subcontractors, sub-subcontractors, materialman, and suppliers or any person or consultant under Contractor's control.

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§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

(Paragraphs deleted)

Intentionally deleted.

§ 15.2 INITIAL REVIEW OF CLAIM

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial recommendation regarding Claims. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial recommendation shall be required as a condition precedent to mediation or litigation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no recommendation having been made or unless the delay caused by submitting the claim and decision by the Initial Decision Maker would affect any rights under applicable limitations period. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not review disputes between the Contractor and persons or entities other than the Owner.

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

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in making a recommendation.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either recommend rejection or approval of the Claim in whole or in part.

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

§ 15.2.6 Either party may file for mediation at any time, subject to the terms of Sections 15.2.1 and 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial recommendation, demand in writing that the other party file for mediation within 60 days of the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 Intentionally deleted.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction

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Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.4 ARBITRATION


The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

ARTICLE 16 BUSINESS ETHICS

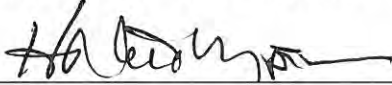
§ 16.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors, or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors, or vendors to Owner's personnel.



OWNER



CONTRACTOR

COLLIN COUNTY COMMUNITY COLLEGE
By: 

(Signature)

By: 

(Signature)

President, ~~Board of Trustees~~ 