



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Multi-Campus Building Envelope Repairs (Phase 4)
3904 Avenue T.
Galveston, TX 77550

THE OWNER:

(Name, legal status and address)

Galveston Independent School District
3904 Avenue T.
Galveston, TX 77550

THE ARCHITECT:

(Name, legal status and address)

PBK Architects, Inc.
dba BEAM Professionals
11 Greenway Plaza, 22nd Floor
Houston, TX 77046

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ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, Addenda, and other Construction Documents issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal (except to the extent that the proposal has been modified by the terms of the Contract), and portions of Addenda relating to bidding or proposal requirements. Any reference to any Contract Documents shall mean the document as amended and/or supplemented for this Project.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the "Contract") and are as fully a part of the Contract as if attached hereto or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.2.1 To be effective, all Contract Documents requiring signatures must be signed first by the Contractor and then by the Owner's authorized representative, after approval by Owner's Board of Trustees, unless otherwise delegated. If an approved Contract Document requiring signature has not been signed, then the missing signature shall be provided within a reasonable period of time. Failure to sign an approved Contract Document after notice and a reasonable opportunity to sign shall be considered a material breach of the Contract. Contractor's signing of the Agreement shall be considered as signing all Contract Documents identified therein.

§ 1.1.2.2 After execution of the original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification signed by Contractor, approved by Owner's Board of Trustees, unless otherwise delegated, and signed by an authorized representative of Owner's Board of Trustees. As a material consideration for the making of the Contract, Modifications to the Contract shall not be construed against the maker of said Modifications.

§ 1.1.2.3 In the event of conflict, terms and conditions contained in the Agreement 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. If the advertisement or invitation to bid and the Contractor's bid or proposal are included in the Contract Documents, then the advertisement or invitation to bid shall take precedence over the Contractor's bid or proposal, unless specifically agreed otherwise herein.

§ 1.1.2.4 Any reference to the Agreement, General Conditions, or any other Contract Document shall mean the document as amended and/or supplemented for this Project.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items of cost or value needed to produce, construct, and fully complete the public Work identified by the Contract Documents. The Contract Documents include all Construction Documents, such as Drawings and Specifications that establish in detail the quality levels of materials

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and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036, and any other standards to which the Architect is subject pursuant to applicable law or contract. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction 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, wherever located and whenever issued, 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.

(Paragraphs deleted)

§ 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, all Drawings, Specifications, submittals, transmittals, deliverables, instructions to Contractors, studies, surveys, models, sketches, and other similar materials or documents, including those in electronic form, prepared by the Architect and the Architect's consultants and shall set forth in detail the requirements for construction of the Project.

§ 1.1.8 Project Manual

The Project Manual is a volume assembled for the Work which includes the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.9 Project Manual Addenda

Project Manual Addenda are written, or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding or proposal documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Agreement is executed. The Contractor and subcontractors shall include all addenda items on their copies of the Drawings and Specifications.

§ 1.1.10 Contract Sum

"Contract Sum" shall have the same meaning as in Section 4.1 of the Agreement, except when the Project is a Construction Manager at Risk Project, in which case "Contract Sum" shall have the same meaning as in Section 5.1 of AIA Document A133– 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended for the Project.

§ 1.1.11 Parties

The following definitions apply to parties named in the Contract Documents:

Owner: Galveston Independent School District

Architect: PBK Architects, Inc. dba BEAM Professionals

Contractor: JR Jones Roofing

The Owner may retain Program Manager(s) to carry out some of the functions of the administration of the Owner's construction program. The Contractor, Architect, and Program Manager (when applicable) shall cooperate with each other in the performance of their respective functions. The management and reporting systems used by the Owner and/or Program Manager, including the assignment of the Program Manager, may be changed by Owner during the Project.

§ 1.1.12 Abbreviations

AIA:	American Institute of Architects
AIEE:	American Institute of Electrical Engineers
ACI:	American Concrete Institute
AHERA:	Asbestos Hazardous Emergency Response Act
AISI:	American Iron and Steel Institute
AISI:	American Institute of Steel Construction
AISC:	American Institute of Steel Construction
ANSI:	American National Standards Institute
ASA:	American Standards Association
ASTM:	American Society of Testing Materials
AWSC:	American Welding Society Code
CERCLA:	Comprehensive Environmental Response, Compensation, and Liability Act
EPA:	Environmental Protection Agency
FS:	Federal Specification
NEC:	National Electrical Code
NIC:	Not in Contract (indicates work not to be done by this Contractor under this Agreement)
OSHA:	Occupational Safety and Health Administration
SPR:	Simplified Practice Recommendation
TAS:	Texas Accessibility Standards
UL:	Underwriters Laboratories, Inc.

§ 1.1.13 Miscellaneous Other Words

§ 1.1.13.1 Business Day

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

§ 1.1.13.2 Calendar Day

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

§ 1.1.13.3 Holidays

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

§ 1.1.13.4 Work Day

Work days are all calendar days except Holidays.

§ 1.1.13.5 Anticipated Adverse 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 Adverse Weather Days shall be considered by Owner for time extensions based upon weather. Section 15.1.5.3 lists required Anticipated Adverse Weather Days.

§ 1.2 Correlation and Intent of the Contract Documents

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

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

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirement, unless the Contractor obtained a decision in writing from the Architect as to what shall govern before the submission of the Contractor's proposal. The Architect, in case of such conflict, may interpret or construe the documents so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interest of Owner, and the Architect's decision shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

§ 1.2.2 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 Relation of Specifications and Drawings

General Requirements in the Specifications govern the execution of all Specifications. Summary paragraphs present a brief indication of the Work, but do not limit the Work as later detailed. The Drawings and Specifications are correlative and have equal authority and priority. Should the Drawings and Specifications have internal inconsistencies, then the Contractor shall base the bids and construction on the most expensive combination of quality and quantity of Work indicated. If Drawings and Specifications are not in concurrence regarding quantity or quality, Contractor shall request interpretation from the Architect. For purposes of construction, the Architect shall determine in writing the appropriate Work, after the Contractor brings the inconsistency to the Architect's attention. Failure to report an inconsistency shall be evidence that Contractor has elected to proceed in the more expensive manner.

§ 1.2.4.1 Drawings are in part diagrammatic, and do not necessarily show complete details of construction, materials, or their performance, or installation, and do not necessarily show how construction details or other items of work or fixtures or equipment may affect any particular installation. These shall be ascertained by the Contractor from the Architect and correlated to bring the parts together to a complete whole.

§ 1.2.4.2 All dimensions shall be verified by field measurements and all work laid out to permit pipes, valves, ductwork, lights, panels, other items of construction, to be located as closely as possible to locations shown. All items shall be checked before installation to determine that they can be concealed properly, if appropriate, and that they clear any structural components, supports for other items, and cabinets and equipment or other mechanical, electrical or architectural items having fixed locations.

§ 1.2.4.3 Work shall be laid out to assure ready accessibility to valves, fittings, and other items requiring servicing, adjustment or checking.

§ 1.2.4.4 Actual physical dimensions of specified stock items shall govern over dimensions shown for work to receive stock items. Custom items or modified stock items shall be fabricated to dimensions shown, or to fit into other dimensioned work.

§ 1.2.4.5 If Work is required in a manner which makes it impossible to produce the specified quality of Work, or should errors, omissions, or discrepancies exist in the Contract Documents, the Contractor shall request in writing an interpretation before proceeding with Work. If Contractor fails to make such a written request, no excuse or claim

will thereafter be entertained for failure to carry out Work in a satisfactory manner as specified by Contract Documents. Should conflict occur in or between Drawings and Specifications which should reasonably have been ascertained by the Contractor, Contractor is deemed to have estimated and included in the Contract Sum the more expensive way of doing the Work.

§ 1.2.5 Materials, Equipment and Processes

The mechanical, electrical, and plumbing drawings show the general arrangement and extent of the Work. Exact location and arrangement of the various parts shall be determined with the approval of the Architect after equipment has been selected and as the Work progresses.

§ 1.2.5.1 All Work shall, insofar as possible, be installed in such a manner as will not interfere with architectural or structural portions of the building. Should changes become necessary because of a failure of the Contractor to comply with the bidding instructions concerning equipment requiring area not shown on the Construction Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. The Contractor shall be required to submit material data and drawings on all equipment, which may vary from the Drawings and Project Manual, and any interferences must be eliminated before Work proceeds.

§ 1.2.5.2 Where in the Project Manual, Specifications, and Drawings, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Where particular items are specified, products of those named manufacturers are required unless Contractor submits for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements in the Contract Documents. Contractor shall bear all risk caused by submitting substitutions, including all costs. The Owner may approve substitutions only when the substitution is clearly provided by the Contract to be equal in performance characteristics to the requirements of the Contract Documents, equally compatible with the existing installations, and complementary to the architectural design for the Work. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment, but shall be obtained by the Contractor from the manufacturer as required for the proper evaluation and/or functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved in advance by the Architect and Owner; however, indicated and specified performance and material requirements are the minimum. The Owner and the Architect reserve the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project in writing.

§ 1.2.5.3 Diagrammatic indications of piping, ducts, conduit, and other similar items are subject to adjustment to obtain required grading, passage over, under or around obstructions, to avoid exposure to finished areas, or unsightly, obstructing conditions. Contractor shall be responsible for coordination of these adjustments and recommending alternate solutions whenever design details affect construction feasibility, costs, or schedules. All manufactured articles, materials, and equipment shall be incorporated into the Work in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.6 Standards and Requirements

When the Work is governed by reference to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, the current edition as of the date of execution of the Agreement shall apply. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

§ 1.2.7 Errors in Construction Documents

The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions. The Contractor stipulates and agrees that the Owner has no duty to discover any errors, inconsistencies, or omissions in the Drawings, Plans, Specifications and other Construction Documents, and has no duty to notify

Contractor of same. Owner makes no warranty as to the completeness, adequacy, and accuracy of any Drawings, Plans, Specifications or other Construction Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies, or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Sum due to delays or disruptions to the Work.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Construction Documents

§ 1.5.1 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership, of the Construction Documents, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Construction Documents. The Owner holds perpetual right to use all of the Construction Documents for this Project. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are granted a limited license to use and reproduce the Construction Documents provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Construction Documents. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Construction Documents on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the copyright holder. All copies of the Construction Documents, except the Contractor's record set, shall be returned or suitably accounted for to the copyright holder upon completion of the Work.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered to the individual for which it was intended in person, by registered or certified mail, return receipt requested, by courier service providing proof of delivery, or by electronic transmission (facsimile or email), with electronic confirmation of receipt, if a method for electronic transmission is set forth in the Agreement. For notices delivered by electronic transmission and received after 5:00 p.m. on a day on which the recipient's offices are open, or on a weekend, Holiday, or other day on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next day on which the recipient's offices are open.

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Contract Documents or any other information or documentation in digital form, including, in the Owner's sole discretion, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. Notwithstanding any provision herein to the contrary, if the parties agree to an exchange of electronic data/CAD files, such transfer shall be in accordance with the provisions of Rule 1.103(d) of the Rules and Regulations of the Texas Board of Architectural Examiners. In this regard, the seals and signatures shall be removed from any Drawings or Project Manual and the following statement substituted: The record copy of this Drawing or Project Manual is on file at the Architect's office. This electronic document is released

for the purposes of reference, coordination and/or facility management under the authority of Texas Registration Number Architect License No. (insert License #). Any modification of this Drawing or Project Manual shall be in compliance with the Texas Board of Architectural Examiner's rules.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in Section 1.7, above, or any use of Contract Documents or any other information or documentation in digital form inconsistent with those protocols set forth in Section 1.7, above, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Parties to Consult

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

§ 1.9.2 Contractor acknowledges that the Contract Sum reflects Owner's absolute budgetary limit for the Costs of the Work. Should the Contractor become aware of circumstances with respect to the Work that, if not addressed or remedied would lead to a cost overrun, it shall immediately notify Owner and Architect of the existence of such circumstances and its recommendation for addressing the circumstances, including any possible elimination or offset of the cost overrun. If at any time circumstances arise that might result in the Contract Sum being exceeded, the Owner, Contractor and Architect shall consult and revise the Drawings and Project Manual (including, but not limited to consideration of substitutions of materials) in such fashion as to cause the Work as revised to be accomplished for the Contract Sum; provided that no such revision shall result in a material diminishment of the square footage of the instructional facilities.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the Galveston Independent School District, and is referred to throughout the Contract Documents as if singular in number. All parties understand that only the Board of Trustees acting as a body corporate has the authority to bind the Owner with respect to all matters requiring the Board's approval under current policy of the Board of Trustees, including, but not limited to, a Change Order or Construction Change Directive modifying the Contract Sum or an extension to the date of Substantial or Final Completion. The Board of Trustees may designate in writing one or more persons to represent the Owner and act on its behalf for such matters, as well as day-to-day operations under the Contract, in accordance with the current policy of the Board of Trustees; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Neither Architect nor Contractor may rely upon the direction of an employee of Owner who has not been designated as set forth herein, and Owner shall not be responsible, financially or otherwise, for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner with respect to matters requiring Owner's approval or authorization. The Owner has contracted with the Architect who will carry out the functions of administration of the Project and the initial arbiter of Claims as identified in Section 15.2.

§ 2.1.2 The Contractor acknowledges that no lien rights exist with respect to public property. The presence of the Owner, the Owner's representative(s) or Architect at the Work site does not imply acceptance or approval of the Work.

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

§ 2.2 Evidence of the Owner's Financial Arrangements

Intentionally deleted.

(Paragraphs deleted)

Init.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures, or for permanent changes in existing facilities. Contractor shall pay for all permit fees and inspection fees required for performance of the Work other than inspection and testing fees which the Owner contracts for separately with a third party, and Certificates of Occupancy fees. All of such fees shall be considered Cost of the Work unless the Contractor is required to pay for them without reimbursement due to the Contractor's fault under other provisions of the Contract Documents.

§ 2.3.2 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if a new Architect has been employed by Owner.

§ 2.3.4 If requested in writing by the Contractor prior to the start of the Work, the Owner shall furnish surveys known to the Owner describing physical characteristics, legal limitations, and utility locations for the site of the Project and a legal description of the site. Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes, or pipelines, or the presence or absence of easements. The Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner and shall exercise proper diligence and take appropriate precautions relating to the safe performance of the Work. THE OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR GUARANTY TO CONTRACTOR OR TO ANY OTHER PERSON THE RELIABILITY, CONSTRUCTABILITY, COMPLETENESS, OR ACCURACY OF ANY SURVEYS, REPORTS, STUDIES, TESTS, ARCHITECTURAL OR ENGINEERING PLANS, OR SIMILAR INFORMATION PROVIDED BY OWNER IN CONNECTION WITH THIS CONTRACT, NOR DOES THE OWNER REPRESENT, WARRANT OR GUARANTY THAT SUCH INFORMATION IS FREE FROM DEFECTS, ERRORS OR DEFICIENCIES, AND ALL SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES ARE HEREBY EXPRESSLY DENIED AND DISCLAIMED. The Owner shall not be liable to the Contractor or any other person for breach of warranty or misrepresentation in the event of any errors or deficiencies in such information provided to the Contractor by the Owner. The Owner's provision of a survey will not relieve the Contractor from its obligations to examine the site or exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request. Absent such timely request by Contractor, any Claim based upon lack of such information or services shall be waived.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The cost of reproductions will be borne by the Contractor.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct non-conforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by the Contract or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's rights under Section 12.2.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails, after receipt of notice from the Owner, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Amounts charged to the Contractor are subject to prior approval of the Architect and an appropriate Change Order

shall be issued or the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the actual cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's and other consultants' additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within thirty (30) days after receipt of written notice from the Owner therefor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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, and includes the Construction Manager at Risk, if applicable.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and in a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship. Workmanship shall be of a quality to produce first class results. This shall mean that all material shall be installed in a true and straight alignment, level and plumb, patterns shall be uniform, and jointing of materials shall be flush and level unless otherwise directed in writing by the Architect. All labor shall be performed in the best manner by laborers, workers, and mechanics skilled in their respective trades.

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

§ 3.1.4 By submission of a proposal, the Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work: (1) that the Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents; (2) that the Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor required to timely complete the Work and perform its obligations hereunder and that the Contractor is sufficiently experienced and competent to do so; (3) that the Contractor is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public, and quasi- public authorities having jurisdiction over the Contractor, the Work, or the site of the Project; and (4) that the execution of the Contract and its performance thereof are within the Contractor's duly-authorized powers.

§ 3.1.5 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 the Contract 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.

§ 3.1.6 Contractor, its Subcontractors, Sub-subcontractors, suppliers, and other vendors shall bear responsibility for compliance with all applicable state and federal laws, regulations, guidelines, and ordinances applicable to the Work, including but not limited to, laws concerned with labor, equal employment opportunity, safety, minimum wages, and prevailing wage rates under Chapter 2258 of the Texas Government Code. Contractor further recognizes that the Owner and Architect do not owe the Contractor or any Subcontractor, Sub-subcontractor, supplier, or other vendor any duty to supervise or direct its work so as to protect such party from the consequences of its own conduct. Without limiting the foregoing, the Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.1.7 The Contractor shall disclose the existence and extent of any financial interests, whether direct or indirect, such Contractor may have in any Subcontractor, Sub-subcontractor, supplier, and other vendor which the Contractor may propose for the Project.

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

§ 3.2 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. The Contractor represents and warrants by submission of a proposal that the Contractor has carefully examined the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports, and the site of the Work, and that, from the Contractor's own investigations, the Contractor is satisfied as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions and all other materials which may in any way affect the Work or its performance.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. The Contractor shall take field measurements of any existing conditions related to that portion of the Work, observe and verify any conditions at the site affecting it, and carefully compare them to the Construction Documents, and any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, locations, and other conditions shall be promptly rectified by the Contractor without any additional cost to the Owner. These obligations are for the purpose of facilitating coordination and construction by the Contractor and discovering errors, omissions, or inconsistencies in the Contract Documents. The Contractor shall, as part of the Contractor's preconstruction services, in reviewing the Contract Documents, endeavor to detect any errors, omissions, or inconsistencies in the design and other Contract Documents which may affect the performance or constructability of the Work and promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 Neither the Owner nor the Contractor is required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and the Owner any nonconformity in the Contract Documents with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities that is discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require.

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor an applicable warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for its position.

§ 3.2.5 The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including: (1) The location, condition, layout, drainage and nature of the Project site and surrounding areas; (2) Generally prevailing

climatic conditions; (3) Anticipated labor supply and costs; (4) Availability and cost of materials, tools and equipment; and (5) Other similar issues.

§ 3.2.6 The Contractor shall make a reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation or initiating a Request for Information (RFI). The Contractor shall not ask the Architect for observation of Work prior to the Contractor's field superintendent's personal inspection of the Work. If, in the opinion of the Architect or the Owner, the Contractor does not make a reasonable effort to comply with the above requirements or such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation, and this causes the Architect or its Consultants to expend additional time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's and its Consultant's additional services and expenses made necessary by the Contractor's failure and the Owner shall be entitled to deduct such amounts from the Contract Sum. The Architect will give the Contractor prior notice of intent to bill for additional services and expenses before additional services are performed or additional expenses are incurred.

§ 3.2.7 Contractor shall not perform any Work that may be affected by any condition or circumstance for which Contractor is required to notify the Architect and Owner under this Section 3.2 without further written instructions to Contractor or revised Construction Documents from the Architect. If the Contractor believes that additional Contractor cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Section 3.2 the Contractor shall notify the Owner prior to incurring such additional cost or expending such additional time and, if any necessary changes, including substitution of materials, are not accomplished by appropriate Modification, Contractor may submit Claims as provided in Article 15. The Contractor shall not be entitled to any additional time, compensation, or other allowance for any error, negligence, or additional Work caused by Contractor's failure to visit the site, verify site conditions, and thoroughly study and compare the Construction Documents as required under this Section 3.2.

§ 3.2.8 If the Contractor fails to perform the obligations of this Section 3.2, the Contractor shall also be responsible for paying such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations, including any extra efforts as required to bring the project back into alignment with the original schedule. Without limiting the foregoing, the Contractor shall be liable to the Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents, differences between field measurements or conditions and the Contract Documents, nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, and limitations of the Contractor's ability to satisfactorily perform the Work or to honor an applicable warranty, and limitations of or interference with the Owner's intended use, caused by products or systems specified when: (1) such errors, inconsistencies, omissions, differences, nonconformities, or limitations are the fault of Contractor, in whole or in part, (2) the Contractor failed to discover such errors, inconsistencies, omissions, differences, nonconformities, or limitations due to its failure to properly perform the obligations of Section 3.2, (3) the Contractor recognized such errors, inconsistencies, omissions, differences, nonconformities or limitations and failed to report them to the Architect and the Owner, or (4) the Contractor should have detected such errors, inconsistencies, omissions, differences, nonconformities, or limitations as part of Contractor's performance of its obligations under the Contract Documents, including the performance of Contractor's preconstruction services.

§ 3.2.9 Notwithstanding the delivery of a survey or other documents by the Owner, prior to performing any Work, Contractor shall, if applicable, independently determine the location of all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, Contractor shall, if applicable, review the appropriate AHERA and hazardous materials surveys for the particular site(s) involved in the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform the Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project site and verify all dimensions, measurements,

property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. If applicable, Contractor shall comply with U.S. Environmental Protection Agency rules concerning renovating, repairing or painting work in schools built prior to 1978 involving lead-based paint.

§ 3.3 Supervision and Construction Procedures

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

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

§ 3.3.2.1 Contractor shall, before any duties are performed on Owner's property where students are present, and at least annually thereafter, obtain all criminal history information required by Texas Education Code Chapter 22; unless Owner, in its sole discretion, determines in writing that an exception applies under Section 22.08341(c) of the Texas Education Code, subject to Contractor's and all Subcontractors' compliance with Section 22.08341(i) of the Texas Education Code. If Contractor is required by Chapter 22 to obtain the information from the Fingerprint-based Applicant Clearinghouse of Texas, then Contractor will also subscribe to that person's criminal history record information. Before beginning any Work on the Project, Contractor will provide written certification to the Owner that Contractor has complied with the statutory requirements as of that date. The form of certification by the Contractor shall be supplied by the Owner and must be supplemented by the Contractor as required by law, or as requested by Owner. Upon request by Owner, Contractor will provide, in writing, updated certifications and the names and any other requested information regarding individuals to whom Chapter 22 applies, so that the Owner may obtain criminal history record information on such individuals. Contractor shall assume all expenses associated with obtaining criminal history record information. It shall be the responsibility of the Contractor and the entities with which the Contractor contracts to ensure compliance with this provision.

§ 3.3.2.1.1 Subcontractors or any Subcontractor entity, as defined by Texas Education Code Chapter 22, shall be required by the terms of their contract with Contractor or any other contracting entity (as defined in Texas Education Code Chapter 22), and by Texas law, to obtain the required criminal history record information on their employees, agents, or applicants, to give required certifications to Owner and the contracting entities, and to obtain required certifications from the subcontracting entity's subcontractors.

§ 3.3.2.1.2 Contractor will not assign any "covered employees" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor or any Subcontractor will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 3.3.2.1.3 For the purposes of this Section 3.3.2.1, "covered employees" means employees, agents or Subcontractors of Contractor or a Subcontractor who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. "Disqualifying criminal history" means: any conviction or other criminal history information designated by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator certification under Texas Education Code Section 21.060 and 19 Texas Administrative Code § 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Texas Penal Code Title 5 Offenses Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state. Disqualifying criminal history also includes pending charges, conviction, probation, or deferred adjudication for any one of the following: (1) Any offense against a child; (2) Any sex offense; (3) Any crimes against persons involving weapons or violence; (4) Any felony offense involving controlled substances; (5) Any offenses involving the sale or distribution of controlled substances; (6) Any offenses involving dishonesty, fraud, deceit, theft, misrepresentation; (7) Two or more offenses committed within any 12-month period involving public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct; and (8) Offenses involving abuse under the Texas Family Code. Owner shall be solely responsible for making the final determination of what constitutes direct contact with Owner's students and what constitutes a disqualifying criminal history.

§ 3.3.2.2 Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's Subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying or possessing weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with Owner's students or employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students or employees. The Contractor shall further ensure that no on-site fraternization shall occur between personnel under the Contractor's and Subcontractor's direct or indirect supervision and Owner's students or employees or the general public. Sexual harassment is strictly forbidden. Any employee of the Contractor or a Subcontractor who is found to have engaged in any such conduct shall be subject to appropriate disciplinary action by the Contractor or Subcontractor, including immediate removal from the job site.

§ 3.3.2.3 All areas of campus, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Contractor shall also require adequate and appropriate dress, including wearing shirts at all times, and "badging" of Contractor's employees, Subcontractors, and all other persons carrying out the Work on the job site for identification. Contractor shall ensure that all construction workers, whether Contractor's own forces or the forces of Contractor's Subcontractors, wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's name in a typeface large enough to be seen from a reasonable distance. Contractor shall furnish to Owner (and update, as appropriate) photo identification of all workers and employees.

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

§ 3.3.2.5 Contractor shall follow, and shall require all employees, agents and subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 3.3.2.6 Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's Subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's Subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property.

§ 3.3.2.7 Any individual found by Owner to have violated the standards of conduct or restrictions set forth in Section 3.3.2 is subject to immediate removal from the job site and, in Owner's sole discretion, permanent removal from the Project or all construction on any of Owner's property. Repeated removal of Contractor's or Contractor's Subcontractor's forces, or one serious infraction, shall constitute a material breach of the Contract justifying the immediate termination by Owner pursuant to Article 14. THE CONTRACTOR HEREBY RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FROM AND AGAINST CONTRACTOR'S AND ANY SUBCONTRACTOR'S FORCES' NON-COMPLIANCE WITH THE STANDARDS OF CONDUCT OR RESTRICTIONS SET FORTH IN SECTION 3.3.2, NON-COMPLIANCE WITH CRIMINAL LAW, AND NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. 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.

§ 3.3.3 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. Copies of inspection reports, photographs or other related records shall be made available to the Owner for review if requested. Reports and documentation shall be formatted and developed in a logical format indicating dates, time of day, findings and the person performing the inspection.

§ 3.3.4 The Contractor shall review Subcontractor 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 for the safety of their employees, persons, and property and the requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws, including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 3.3.5 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303, and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq. Contractor shall fully comply, and shall require any applicable Subcontractor to comply, with: (1) The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work; (2) The special shoring requirements, if any, of the Owner; and (3) Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system. Trench excavation safety protection shall be a separate pay item and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item and shall be based on the square feet of shoring used.

§ 3.3.6 The Contractor has the responsibility to ensure that all Subcontractors, Sub-subcontractors, suppliers, and their agents and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work with that of all trades, Subcontractors, and others on the Project, including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of all materials and equipment required under the Contract Documents. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which may be currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and

shall comply with all rules, regulations and requirements of the Owner and the school campus or facility on which the Work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. When work occurs in existing facilities, Contractor understands and accepts the cost and schedule impacts associated with work in existing facilities and the potential delays and disruptions to the progress of the Work and has considered such delays and disruptions in the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other Contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take, all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

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

§ 3.4 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.

§ 3.4.1.1 The Contractor and any Subcontractor or Sub-subcontractor on the Project shall properly classify, as an employee or an independent contractor, in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008, any individual the Contractor, Subcontractor, or Sub-subcontractor directly retains and compensates for services performed in connection with the Contract. Any Contractor, Subcontractor, or Sub-subcontractor who fails to properly classify such an individual may be subject to the penalties of Texas Labor Code Sec. 214.008(c).

§ 3.4.1.2 Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor, and upon any Subcontractor and Sub-Subcontractor under the Contractor, to pay all laborers, workers, and mechanics employed or utilized by them in the execution of the Contract not less than the prevailing rates of per diem wages for work of a similar character in the locality at the time of construction.

§ 3.4.1.3 In accordance therewith Texas Government Code Section 2258 et seq.; Texas Labor Code Section 62.051 et seq, the Owner has established a scale of prevailing wages which is incorporated in the Contract Documents, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Wages listed are minimum rates only, and payment greater than the prevailing wage is not prohibited. No claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rates provided herein. If no schedule of prevailing wage rates is included in the Contract Documents, then the parties shall, at a minimum, use the wage rates determined by the U.S. Department of Labor for projects located in the County in which the Project is located in accordance with the Davis-Bacon Act, 40 USC Section 276a, which can be accessed on the internet at www.gpo.gov/davisbacon/, or the wage rates determined by any local contractor association, whichever is higher..

§ 3.4.1.4 The Contractor and each Subcontractor and Sub-Subcontractor shall keep a record showing the name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the Work and the actual per diem wages paid to each worker. 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. These records shall be maintained and made accessible for no less than three (3) years following the date of Final Completion.

§ 3.4.1.5 A Contractor or Subcontractor or Sub-Subcontractor who violates the requirements of Sections 3.4.1.2 or 3.4.1.3 shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each laborer, worker, or mechanic employed for each calendar day or part of the day that the laborer, worker, or mechanic is paid less than the wage rate stipulated in the scale of prevailing wages applicable to the Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.1.6 In the event of a complaint of a breach of the requirements in Sections 3.1.6, 3.4.4.2 or 3.4.4.3 above, the Owner shall have the right to make a determination as provided by law, and to retain any amount due under the Contract pending a final determination of the violation. Owner may conduct, at its discretion, wage-related interviews of any worker at the sites of the Work without prior warning to the Contractor or Subcontractor or Sub-Subcontractor.

§ 3.4.1.7 In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Contractor or any of its Subcontractors or Sub-subcontractors, Owner may, at its option and without any notice required by the Contract, terminate the Contract for default unless the Contractor remedies the strike of Work or Work stoppage or other disruption within twenty (20) calendar days after the dispute arises.

§ 3.4.1.8 The Contractor shall require all Subcontractors and Sub-Subcontractors to comply with the provisions of this Section 3.4.1 and its subparts.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Any such substitution request shall be made to the Architect within fifteen (15) days after execution of the Contract.

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

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the Contract Time and the construction schedule; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations and will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect and the Owner in sufficient time to allow no less than twenty-one (21) Business Days for review, unless a shorter time is agreed upon in writing. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information as stated herein.

§ 3.4.2.3 Whether or not the Owner or the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly qualified by training and experience and skilled in tasks assigned to them. The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall furnish Owner, on request, resumes of the Contractor's key personnel involved in the day-to-day Work on the Project, as well as a list of all engineers, consultants, subcontractors and suppliers involved in construction. At the written request of the Owner or Architect, the Contractor shall not use in the performance of the Work any engineer, consultant, or employee of the Contractor, Subcontractor or Sub-subcontractor reasonably deemed by Owner to be incompetent, careless, unqualified to perform the Work assigned to him, insubordinate, in violation of any provision in the Contract Documents, or otherwise unsatisfactory to Owner. Contractor shall engage sufficient workers on the Project at all times for the proper coordination and performance of the Work in the time periods required by the Contract. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that the Work will be performed and completed in a good and workmanlike manner, continuously and diligently in accordance with the Contract Documents, all applicable building codes, and generally accepted standards of engineering and construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse by parties other than Contractor, alterations to the Work not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation by parties other than Contractor, or normal wear and tear and normal usage, but such exclusions shall only apply after Owner has taken occupancy of the portion of the Project at issue. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. Notwithstanding anything in the Contract Documents to the contrary, Owner and Contractor expressly agree that the warranties stated herein shall mean the individual warranties associated with each particular Work or designated portion thereof within the Project, and each such individual warranty shall run from the date of Substantial Completion of the entire Work (unless otherwise expressly provided in the applicable Contract Documents for that particular Work). Contractor's warranties herein shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or designated portion thereof or, if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.1.1 In the event of failure, errors, omissions, defects, deviations, or other nonconformities of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of such Work or replacement of the nonconforming items, at no cost to the Owner. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy any defects as covered by Contractor's warranty. If Contractor does not respond to the written notice, either by beginning corrective work or notifying Owner in writing stating when corrective work will begin, within ten (10) days of Contractor's receipt of the notice or such shorter time as required in the Contract Documents, the Owner may take measures to correct the defects and Contractor will be obligated to reimburse the Owner's costs. Any measures taken by Owner to correct defects due to Contractor's failure to timely respond to Owner's written notice shall not operate to void or otherwise alter any warranties issued by, for, or through the Contractor. If notice of defects covered by warranty is given in writing to the Contractor on a timely basis, the obligation to

provide the warranty work will extend beyond the applicable warranty period until the warranty defect is remedied and accepted by the Owner.

§ 3.5.1.2 Unless shorter response durations exist in the Contract Documents, the Contractor shall provide warranty repair service within 8-hours of warranty notice for the following: (1) Cooler and freezer equipment; (2) Chiller and pumps; (3) Boiler and pump; (4) Lift station; or (5) Generator.

§ 3.5.1.3 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 of a warranty claim until written acknowledgement by the Owner that the claim has been resolved.

§ 3.5.1.4 The Contractor agrees to assign to the Owner at the time of Final Completion of the Work, such assignment to be effective no later than Final Completion, any and all third-party warranties relating to materials, equipment, machinery, components, and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such third-party warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of any such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor's warranties shall in no way limit or abridge the warranties of the manufacturers and suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with Subcontractors and Sub-subcontractors and other 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.

§ 3.5.1.5 As a condition precedent to Final Payment, the Contractor shall submit to Owner as set forth below a complete set of warranties, bonds, and other guarantees on equipment, machinery, materials, components, and labor from Subcontractors, Sub-subcontractors, manufacturers, and suppliers, as appropriate, on the Subcontractor's, Sub-subcontractor's, manufacturer's, or supplier's approved forms and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents. All warranties shall include labor and materials. Contractor shall:

- (1) Obtain duplicate original warranties, executed by all applicable Subcontractors, Sub-subcontractors, suppliers, and manufacturers, and stating the warranty commencement date and duration as required by the Contract Documents;
- (2) Verify that the documents are in proper form and contain full information;
- (3) Co-sign warranties, when required;
- (4) Bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers;
- (5) Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;
- (6) Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified;
- (7) Separate each warranty with index tab sheets keyed to the Table of Contents listing; and
- (8) Deliver warranties, bonds, and other guarantees in the form described above, to the Architect who will review same prior to submission to the Owner.

§ 3.5.1.6 The Contractor shall issue in writing to the Owner as a condition precedent to Final Payment a "General Warranty" reflecting the terms and conditions of Section 3.5.1 for all Work under the Contract Documents. This General Warranty shall be assignable. Except when a longer warranty time is specifically called for in the Contract Documents or is otherwise provided by law, the General Warranty shall be for twelve (12) months from the date of Substantial Completion of the entire Work and shall be in form and content otherwise satisfactory to the Owner. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion and Final Completion and the date upon which the one-year warranty required hereunder will expire. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one month prior to the expiration of the one-year warranty period. Prior to termination of the one-year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the Work and be responsible for correcting any deficiencies not caused by the Owner or by the normal use of the

Work which are observed or reported during the reinspection. (For extended warranties required by various sections (e.g., roofing, compressors, mechanical equipment), Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner.) Contractor shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one-year warranty period at least one month prior to the expiration date, Contractor's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 3.5.1.7 Contractor's express warranties and obligations herein are not exclusive of any other warranties, remedies, or guarantees Owner may have, either express or implied, under the Contract Documents, at law, or in equity, but are in addition to and not in lieu of or in limitation of any other such warranties, remedies, or guarantees.

§ 3.5.2 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of: (1) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or (2) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or (3) such further reasonable proof as is required by the Architect. Contractor shall also 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 61.1036(c)(3)(F).

§ 3.6 Taxes

Contractor shall pay all applicable local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. Owner is an exempt entity under the tax laws of the State of Texas, and Contractor shall not include in the Contract Sum or any Modification any amount for any taxes from which the Owner is exempt by virtue of its status as a governmental entity and/or as a Texas independent school district. 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 the Limited Sale, 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. Contractor will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from its suppliers. Failure of Contractor or any Subcontractor or Sub-subcontractor to obtain Certificates of Resale from their suppliers shall make the Contractor, Subcontractor, or Sub-subcontractor responsible for absorbing the tax, without compensation from Owner. CONTRACTOR HEREBY RELEASES, INDEMNIFIES AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 After the Architect has filed the plans and specifications with the Texas Department of Licensing and Regulation, the Architect shall notify Contractor that Contractor may make and submit the applications for the building permit. 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. The Contractor shall procure (as required by the Contract Documents) all certificates of inspection, use, occupancy, permits and licenses, pay all charges, deposits and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection use and occupancy shall be delivered to the Architect upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum, and constitute Costs of the Work unless otherwise provided by the Contract Documents.

§ 3.7.1.1 The Contractor shall be responsible for timely notification to and coordination with all utility companies

regarding the provision of services to the Project. The Contractor shall immediately inform the Architect when the Owner's participation is required, and the Architect will notify the Owner. Connections for temporary and permanent utilities, utility district/company inspections, tap charges, water meter charges, and any other similar fees assessed by jurisdictional authorities having control over the Project, as well as payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the direct responsibility of the Contractor, without reimbursement from Owner, unless otherwise agreed in writing. If the Work is new construction, then payment for temporary and permanent utility services shall be the direct responsibility of the Contractor, without reimbursement from Owner, until Substantial Completion.

§ 3.7.1.2 After consultation with the Owner, the Contractor shall obtain all permits and approvals for itself and the Owner, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Also after consultation with the Owner, the Contractor shall 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. Contractor shall coordinate processing all forms and fees with the Owner. Contractor's obligations under this Section may or may not require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction site. Any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. Reimbursable expenses shall not include any fines or penalties assessed against the Contractor, Contractor's Subcontractors or Sub-subcontractors, the Project, or the Owner.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In addition, Contractor shall authorize posting of any notices concerning the Workers Compensation insurance carried by other parties involved in the Project, including without limitation, Architect, at the same location where Contractor posts notices regarding Workers Compensation. If applicable, the Contractor shall procure and obtain all 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 from time to time for the performance of the Work.

§ 3.7.3 If the Contractor performs Work when Contractor knows or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume all responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and within forty-eight (48) hours after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. The Owner will then consider the facts and the reports of the Architect and the Owner will make the final determination of action. If the Contractor disputes the Owner's determination, the Contractor may submit a Claim 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 in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

§ 3.8.2

(Paragraphs deleted)

Calculation of costs or credits for allowances shall be as described in article 7.1.5.

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

§ 3.8.4 When performing Work under allowances, Contractor shall solicit and receive not less than three written proposals, unless the requirement to obtain proposals is waived by the Owner in advance, and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the Owner.

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. In addition, the Contractor may employ a project manager and necessary assistants who may supervise several Project sites. The list of all supervisory personnel, including the project manager and superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart shall be submitted to the Owner and Architect. 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 similarly confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Questions about plan interpretation or directions shall be submitted to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion. Contractor's selection of project manager or superintendent(s) shall be approved by Owner. The Contractor shall not engage supervisory personnel or utilize an organization and chain-of-command other than as approved by Owner and Architect, and Contractor shall not replace the project manager or superintendent(s) without Owner's consent or until a replacement project manager or superintendent(s) has been selected in accordance with this Section. The Owner may reject or require removal of any job superintendent, project manager or employee of the Contractor, Subcontractor or Sub-Subcontractor involved in the Project.

§ 3.9.2 Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to the Work, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion.

§ 3.9.3 Contractor's project manager, while not required to be present full-time at the site, shall remain assigned to the Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected in accordance with the Construction Documents.

§ 3.9.4 Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under General Conditions for such day.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, but in no event prior to the first application for payment shall submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall be in the form of Microsoft Project, or other form designated by the Owner, and contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion and Final Completion; (2) an apportionment of the Work by construction activity; (3) the time required for completion of each portion of the Work; (4) predecessors and successors; (5) phases; (6) baseline start and stop dates; (7) actual start and stop dates; (8) revised start and stop dates; (9) delays; (10) critical path; (11) submittals; (12) extensions of the Contract Time authorized by Change Orders, and (13) Owner activities. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project and, upon such revision, shall be submitted to Architect and Owner for their review and approval. In no event will the schedule be updated less frequently than each application for payment. The Contractor's schedule may be considered when evaluating a request for additional time.

§ 3.10.1.1 If any updated schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits, inclusive of previously accepted time extensions, set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect.

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

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules submitted to and approved by the Owner and Architect. Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

§ 3.10.4 The Contractor shall hold weekly progress meetings at the Project site, or at such other time and frequency as are acceptable to the Owner. Progress of the Work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required and shall take whatever corrective action is necessary to assure that the Project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date.

§ 3.10.5 If reasonably required by Owner, Contractor shall also prepare and furnish Project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and

material, together with periodic updating thereof.

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule.

§ 3.10.7 The Owner's need for delivery of completed Work, or portions thereof, is largely controlled by the necessities of the school calendar and operations of school programs within the calendar year. Those needs are reflected in scheduled completion dates and milestone dates set out in the Contract Documents. The Contractor shall perform the Work in such a way as to not interfere with Owner's operations, and the importance of meeting milestones and completion dates is not exclusive.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, including concealed mechanical, electrical and plumbing items inside of the facility and underground utilities at the site, and one record copy of the approved Shop Drawings, field test records, inspection certificates or records, manufacturers' certificates, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner at all times. At the completion of the Project, all such documents and records shall be delivered to the Architect, with all changes made during construction, in an editable CAD format agreed to at the beginning of the Project along with (3) full sets of hard copy drawings and one digital copy in PDF format, for submittal to the Owner upon completion of the Work as a record of the Work as constructed, and shall be signed by the Contractor certifying to Owner thereby that they show complete and "as-built" conditions, stating sizes, kinds of materials, vital piping, conduit locations, and similar matters. These documents are to be considered part of the Work beyond the General Conditions. Other than Project identification, the documents shall not bear any professional seal or information or any reference to those firms providing professional services to the Owner, except for historical or reference purposes. This shall be completed and up to date within (30) working days from Substantial Completion and shall be a condition precedent to Final Payment.

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

§ 3.11.3 In addition to any other requirement in the Contract Documents and prior to installation, at Owner's or Architect's request, Contractor shall furnish or cause a Subcontractor or Sub-subcontractor to furnish, for the Owner's and Architect's written approval, a physical sample of each specified item, product, fixture or device which is visible by the general public and/or attached to an architecturally-finished surface. Samples shall be suitably labeled, adequately protected and properly stored at the site. Samples which are approved and undamaged will be considered to be suitable for incorporation into the Work.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the 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 and Owner, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect and Owner or, in the absence of an approved submittal schedule, as required under the Contract Documents. At a minimum, Contractor shall submit all submittals with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.5.1 The Contractor shall submit the number of copies of Product Data and Samples which the Contractor, Subcontractors, and Sub-subcontractor need for their use, plus two additional sets for the Architect, one additional set for the Owner, and one additional set for each of the Architect's consultants involved with the particular section of Work. Where shop drawings are involved, the Contractor shall 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 its consultants. After final review and correction of the submittal, the Contractor shall send one corrected set to the Architect and each of the Architect's consultants involved with the particular section of Work.

§ 3.12.5.2 Submittals shall be submitted at the earliest possible time in order to expedite delivery of critical or long lead time items and shall be sequenced logically in accordance with the schedule, required fabrication, and installation time. The Contractor shall submit complete Shop Drawings, Product Data and Samples to the Architect at least thirty (30) days prior to the date the Contractor needs the reviewed submittals and Samples returned, or earlier as required by the Contract Documents. For more complex systems and equipment (such as structural steel; doors, windows, and hardware; casework; mechanical, electrical, and plumbing systems and equipment; food service equipment; sound systems, and the like), the Contractor shall allow additional time for the Architect or his Consultants' review, as appropriate.

§ 3.12.5.3 The Contractor shall be prepared to submit color Samples on any key items (such as quarry tile, vinyl wall covering, etc.) within fifteen (15) days of the award of Subcontract(s). All color Samples required for the Work shall be received by the Architect no later than sixty (60) days of the date of the approval of the Contract Sum. Once samples of all key items are received, the Architect will finalize color selections.

§ 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 verified that the information contained within such submittals complies with the requirements of the Work and of the Contract Documents. If, in the opinion of the Architect or Owner, the Shop Drawings are (a) incomplete, (b) indicate an inadequate understanding of the Work covered by the Shop Drawings, or (c) indicate a lack of study and review by the Contractor prior to submittal to the Architect, the Shop Drawings will be returned, unchecked, to the Contractor for correction of these deficiencies and subsequent resubmittal. The Architect's review of Contractor's submittals shall be limited to examination of an initial submittal and one (1) re-submittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to reimbursement from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's or Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect and Owner of such deviation at the time of submittal and (1) the Architect has given written approval of 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 or Owner's approval thereof, except for any such errors or omissions which are within the Architect's statutory or contractual design responsibility.

§ 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 notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law; however, the Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawings are prepared and, if required by the Architect or applicable law, by a licensed architect or engineer.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.12.10.3 A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this section, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

§ 3.12.11 The Contractor shall provide composite drawings within four (4) weeks of corresponding submittals approval showing how all piping, ductwork, lights, conduit and equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturer, by Code, or in keeping with good construction practice. Space for all trade elements must be considered on the same drawing. Drawings shall be 1/4" per foot minimum scale and shall include invert elevations, elevation views and sections required to meet the intended purpose. Trades required to participate include, but are not necessarily limited to, structural, mechanical, plumbing, fire sprinkler, electrical, data and special systems.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

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

§ 3.13.3 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 the Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area and buildings adjacent to the site or the Work. Prior to the start of any Work which may impact or otherwise affect beneficial use or occupancy of an existing facility, the Contractor shall provide a Work plan for such Work that identifies and controls any interruption for approval by the Owner. Work in this situation shall not proceed until an agreed plan of Work is approved in writing by the Owner.

§ 3.13.5 Without prior written 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 comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site.

§ 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; provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. Structural members shall not be cut and air duct shapes, piping sizes and related system designed elements shall not be changed or modified except with written permission of the Architect. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.14.3 After installation of the Work, Contractor shall carefully fit around, close up, repair, patch and paint such Work to match adjoining surfaces by use of proper tools and new materials, using workers skilled in the required trades. All patching must include replacement or repair of any fire rated assembly to its full rating as required by current codes and standards at the point of Work or as may be required by the building official.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall clean up by removing rubbish, including old and surplus materials, dirt, debris, or trash. At no time shall trash, dirt or other debris be allowed to remain in any wall cavity, ceiling plenum, crawl space or concealed space. 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. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. At completion of the Work, the Contractor shall remove all waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. 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 as a result of such activities, the Contractor or any of his Subcontractors or Sub-subcontractors shall clean and restore such surfaces to their original condition.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, at its discretion, may perform the clean-up and withhold costs incurred from funds due to Contractor or, if the costs incurred are in excess of the funds due to the Contractor, may require the Contractor to reimburse the Owner for the costs incurred.

§ 3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall 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 Prior to Final Completion, in addition to any additional final cleaning work specified in the Contract Documents (including the Specifications), Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect, and their designated representatives, with access to the Work in preparation and progress wherever located. Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees with respect to the Contract or the Work. THE CONTRACTOR SHALL DEFEND SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, WAIVE AND RELEASE ANY CLAIMS AGAINST THE OWNER AND ARCHITECT WITH RESPECT THERETO, AND INDEMNIFY AND HOLD HARMLESS THE OWNER AND ARCHITECT FROM ANY LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, THAT CONTRACTOR SHALL NOT BE RESPONSIBLE TO ARCHITECT FOR DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS, OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS, OR OTHER DOCUMENTS PREPARED BY THE ARCHITECT. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless notice of such infringement is promptly furnished to the Owner and Architect in writing.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, OFFICERS, AND CONSULTANTS, ARCHITECT, ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF), INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE,

REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY ANY ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR ANY OTHER PARTY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR, AND ANY COSTS AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE POST-JUDGMENT INTEREST RATE PROVIDED TO BE PAID UNDER THE LAWS OF THE STATE OF TEXAS.

§ 3.18.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, A SUB-SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.18.3 THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION 3.18 SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM: (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 130.001 ET SEQ.

§ 3.18.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S OR SUB-SUBCONTRACTORS CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN PART BY AN ACT OR OMISSION OF OWNER OR ITS AGENTS, OFFICERS, OR EMPLOYEES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1.

§ 3.18.5 THE OWNER MAY CAUSE ANY SEPARATE CONTRACTOR WHO MAY HAVE A CONTRACT WITH THE OWNER TO PERFORM CONSTRUCTION OR INSTALLATION WORK IN THE AREAS WHERE WORK WILL BE PERFORMED UNDER THIS AGREEMENT, TO AGREE TO INDEMNIFY AND TO HOLD THE OWNER AND THE CONTRACTOR HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS IS PROVIDED IN SECTION 3.18.1 ABOVE. LIKEWISE, CONTRACTOR AGREES TO INDEMNIFY AND TO HOLD THE OWNER'S SEPARATE CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SECTION 3.18.1 ABOVE.

§ 3.18.6 THE CONTRACTOR AGREES TO WAIVE ANY AND ALL CLAIMS IT MAY HAVE AGAINST THE OWNER, CONNECTED WITH, RESULTING FROM, OR ARISING OUT OF, CLAIMS AND SUITS COVERED BY THE INDEMNIFICATION AGREEMENT CONTAINED HEREIN AND AGREES THAT ANY INSURANCE POLICY SHALL PROVIDE FOR THE WAIVER OF SUBROGATION RIGHTS AGAINST THE OWNER.

§ 3.18.7 To the extent allowed by law, the Contractor agrees to insure the indemnity and hold harmless clauses contained in this Section 3.18, including its subparts, with insurance policies, approved by the Owner, and issued by a carrier authorized to do business in the State of Texas, in the minimum amounts set out in Article 11 and/or Section 11.2 of these General Conditions.

§ 3.18.8 The provisions of Section 3.18 in its entirety, including all of its subparts, shall survive the completion, termination, or expiration of the Contract, howsoever caused, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of Final Completion nor acceptance of occupancy in whole or in part of the Work shall waive or release any of the provisions of Section 3.18 and its subparts.

§ 3.19 Antitrust Violation

To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. The Contractor shall include this provision in its agreements with each Subcontractor, Sub-subcontractor and supplier. Each Subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Contract Documents.

§ 4.1.2 The Owner shall notify the Contractor when duties, responsibilities, and limitations of authority of the Architect have been modified.

§ 4.1.3 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Contract Documents by the duties, responsibilities, or activities of the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues a recommendation that the Final Payment is due, and, with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents or expressly authorized by the Owner in writing.

§ 4.2.2 Architect or its authorized representative shall visit the site at least twice per week (or more per week when deemed necessary by the Owner or when necessary to protect Owner's interests) and at other intervals appropriate to the stage of construction, to inspect the progress, quantity and quality of the Work completed, to reject any observed nonconforming Work, and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents and on time. Furthermore, a minimum of two job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect and attended by the Contractor. Attendees will include the Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. The Architect, Owner and their representatives shall at all times have access to the Work. Architect or its authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or its authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall provide notice and shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third party laboratory or testing services to assist the Architect and Owner. On the basis of the on-site observations by Architect, Architect shall keep Owner and Contractor informed of the progress and quality of the Work, through Architect's field reports, and shall guard Owner against defects and deficiencies in the Work. Architect shall promptly notify Owner and Contractor orally regarding any defect or nonconforming Work, which shall be followed by notice in writing of defects or nonconforming Work noted and corrective actions taken or recommended. The Architect, however, shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs, but this does not relieve Architect of Architect's responsibilities under the Contract. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed at no additional cost to Owner.

§ 4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, Sub-subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

§ 4.2.4 Communications

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized by the Owner or Architect, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors, sub-subcontractors, and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols. Notwithstanding the foregoing, Owner reserves the right to communicate directly with the Contractor and Subcontractors.

§ 4.2.5 As further provided in the Contract Documents, based on the Architect's evaluations of the Work progress and quality of the Work and 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, which shall be further subject to the Owner's review, modification, approval, or rejection.

§ 4.2.6 The Architect shall reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will recommend to Owner additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. Testing or inspections required by this section shall be conducted subject to the requirements of Chapter 2269 of the Texas Government Code. 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 or the Owner to the Contractor, Subcontractors, Sub-subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work, or constitute approval or acceptance of Work that is deficient or does not meet the requirements of the Contract Documents. 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 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. In the event of a disagreement between the Architect and Contractor, the Owner will make the final determination after reviewing all of the information.

§ 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, for the purpose of checking for conformance with the Contract Documents and all applicable laws, statutes, codes and requirements applicable to Architect's design services. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or Separate Contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is conducted for the purpose of determining the general accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and/or omissions discovered by the Architect in the Shop Drawings, Product Data and Samples.

§ 4.2.8 The Architect shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with 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 by the Contractor 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 Contract Documents and do not change the Contract Sum or Contract Time, then the Architect may issue an order for a minor change in the Work with prior written notice to the Owner, 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 and, in consultation with the Owner, 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. In the event Architect is required to perform more than two inspection(s) to determine the date or dates of Substantial Completion or Final Completion due to Contractor's failure to meet the conditions for such completion, Contractor shall be responsible for paying or reimbursing Owner for the cost of any Additional Services charged by Architect or Consultants under the agreement between Owner and Architect.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and make recommendations on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor, which shall be copied to the other. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Owner will make the final determination of all matters concerning performance after consultation with the Architect.

§ 4.2.12 Interpretations or recommendations 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 recommendations, the Architect will endeavor to secure faithful performance by both Owner and Contractor.

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

§ 4.2.14 Contractor is allowed a reasonable number of requests for information that are initiated by Contractor and if Contractor exceeds that reasonable amount, as determined by the Architect, in its sole discretion, Contractor shall pay the Architect's fee for review of any additional requests for information. 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. In the event of a disagreement between the Architect and Contractor, the Owner will make the final determination after reviewing all of the 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, away from the site, or otherwise to furnish labor or materials. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor. The term "Subcontractor" includes persons supplying materials or equipment for the Work.

§ 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, away from the site, or otherwise to furnish labor or materials. 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. The term "Sub-subcontractor" includes persons supplying materials or equipment for the Work.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. All Subcontractors shall be procured in accordance with Texas Education Code Chapter 44, Subchapter B, and Texas Government Code Chapter 2269, as applicable. If Contractor is a Construction Manager at Risk, all trade contractors and Subcontractors shall be procured in accordance with Sections 2269.255 and 2269.256 of the Texas Government Code. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its Subcontractors, and Sub-subcontractors, including those recommended or approved by the Owner.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. When the parties agree on a proposed substitute Subcontractor, or if the Owner requires use of a specific Subcontractor, then the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, Sub-subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

(Paragraphs deleted)

§ 5.2.5 Contractor and each Subcontractor and Sub-subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in the Contract Sum or Contract Time shall be allowed for failure to so inspect or investigate.

§ 5.3 Sub contractual Relations

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

terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each Subcontractor and Sub-subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in amount commensurate with the Work to be performed by the Subcontractor or Sub-subcontractor.

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to ensure the payment of any monies to Subcontractors or Sub-subcontractor due to any non-payment to the Contractor or non-payment of Subcontractors by the Contractor.

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

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for any unperformed portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract either in accordance with Article 14 or abandonment of the Project by the Contractor, and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor;
- .2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bonds relating to the Contract; and
- .3 the Subcontractor provides bonds as required by law of prime contractors and by Owner.

If the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract; provided, however, that Owner does not assume Contractor's obligations or liabilities for defaults occurring prior to Owner's assumption, or for the payment to the Subcontractor or supplier for Work, if payment for such Work has previously been made to Contractor. Such liabilities or obligations shall remain with Contractor. Owner shall only be responsible for compensating Subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by Subcontractors prior to the date of Owner's written notice of acceptance.

§ 5.4.2 Such assignment shall not constitute a waiver by Owner of any of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a Subcontractor, Sub-subcontractor, or vendor may also be liable.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.4.4 All subcontracts shall state that they will be assignable to the Bond Trustee or his designee, if funding for the Project is obtained through bond proceeds.

§ 5.5 Notice of Subcontractor Default

Contractor shall promptly notify Owner and Architect in writing of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in 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 worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained for the Project. The Owner further reserves the right to

perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work.

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

§ 6.1.3 Contractor shall cooperate with other Separate Contractors to ensure that the Work remains on schedule. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement and submit such revisions to the Owner for the Owner's approval. The construction schedules, if approved by the Owner, shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

(Paragraph deleted)

§ 6.2 Contractor's Responsibility

§ 6.2.1 It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's Separate Contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable site access and opportunity for introduction and storage or staging 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. Contractor shall be responsible for coordination between Contractor's Subcontractors, Sub-subcontractors and Owner's Separate Contractors. Contractor shall review Owner's contract with Owner's Separate Contractors and become familiar with the requirements and scope of services contained therein.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work, and shall promptly report in writing to the Architect and Owner if Owner's Separate Contractors otherwise fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. Failure of the Contractor to notify the Architect and Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work and is performed in a timely manner. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not actually known to Contractor and are not reasonably apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.3.1 If the Architect is required to provide contingent additional services as provided in the Agreement between the Owner and the Architect, specifically relating to additional compensation for the Architect for evaluating an excessive number of claims submitted by the Contractor or others in connection with the Work in accordance with the Owner's Agreement with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the contingent additional services result from negligence or an omission by the Architect.

§ 6.2.3.2 If the Architect provides services in connection with a legal proceeding, except when the Architect is a party thereto, and the Owner requests the Architect in writing to provide such services, then the cost of such services shall be paid for by the party whose act or omission was a proximate cause of the problem that led to the requirement to provide such services. Such services shall be paid for by such party through the Owner, who upon receipt of same shall reimburse the Architect.

§ 6.2.3.3 All construction costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Contract Documents, will be borne by the Contractor.

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

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14. If such Separate Contractor initiates a claim or legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at its own expense, and if any judgment or award against the Owner arises therefrom, based on Contractor's act or omissions or the act or omissions of Contractor's employees, Subcontractor, Sub-subcontractor or parties for whom Contractor has liability, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court and other costs which the Owner has incurred over and above those paid for directly by the Contractor.

§ 6.2.6 The Contractor shall be responsible for any delays to a Separate Contractor caused by the Contractor or its Subcontractors, Sub-subcontractors, or suppliers.

§ 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 then allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. A properly prepared written request for a change in the Work by Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a recommendation to Owner.

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Contractor shall not make any claim for an adjustment to the Contract Sum or Contract Time due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a Change in the Work. No claim for an adjustment to Contract Sum or Contract Time shall be valid unless so ordered or directed.

§ 7.1.4 Intentionally Deleted

§ 7.1.5 Calculation of costs or credits for Changes, minor changes, Proposals, Contingency expenditures and Allowance expenditures:

§ 7.1.5.1 When calculating the Cost of the Work for Changes, minor changes, Proposals, Contingency expenditures and Allowances, the Contractor shall furnish and include substantiation to satisfaction of the Owner of the following from Subcontractors:

Description of Subcontractor Cost of the Work Element

- | | |
|---|---|
| A | Bare Material Costs |
| B | Labor Hours |
| C | Labor Costs (Direct only, no markup) |
| D | Labor Cost Markup (Benefits, employer taxes) |
| E | Equipment |
| F | Markup on Work performed by other than Subcontractor's own forces, which shall not exceed 10% |

- G Markup on Work performed by Subcontractor's own forces, which shall not exceed 10%
- H Contractor's Overhead and Profit, which shall not exceed 6.25% of A through G
- I Cost of the Work (Sum of A through H)

§ 7.1.5.2 When Contractor self performs Work, when calculating the Cost of the Work for Changes, minor changes, Proposals, Contingency expenditures and Allowances, the Contractor shall furnish and include substantiation to satisfaction of the Owner of the following:

Description of Contractor Cost of the Work Element

- A Bare Material Costs
- B Labor Hours
- C Labor Costs (Direct only, no markup)
- D Labor Cost Markup (Benefits, employer taxes)
- E Equipment
- F Contractor's Overhead and Profit, which shall not exceed 6.25% of A through E
- G Cost of the Work (Sum of A through F)

No additional Fee or General Conditions cost shall apply to self-performed Work.

§ 7.1.5.3 For Unit Prices stated in the Contract Documents or subsequently agreed upon. Additional mark-ups for overhead and profit will not be allowed in Unit Price Work.

§ 7.1.6 The Contractor, upon receipt of written notification by the Architect of a proposed item of change in the Work, shall prepare within 10 calendar days a Change Proposal in such form or forms as directed by the Architect.

- .1 Each separate Change Proposal shall be numbered consecutively and shall include all cost related to the proposed Change in the Work, including any disruption or impact on performance.
- .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 Architect and the Contractor;
- .4 A revised Change Proposal shall be the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix;
- .5 Upon written approval of a Change Proposal by Owner, the Architect and the Contractor, the Architect will prepare an Allowance Expenditure Authorization or Change Order authorizing such change in the Work; and
- .6 The Contractor shall request extensions of Contract Time due to changes in 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 Contract Time extension. Any request for extensions of Contract Time must be substantiated through the demonstration of the impact of the proposed item of change in the Work to the critical path schedule for the Project.

§ 7.1.7 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.

§ 7.1.8 In accordance with Texas Education Code §44.0411 if the Contract Sum is \$1,000,000.00 or more, or if the Contract Sum is less than \$1,000,000.00, and any Change Order, Construction Change Directives, or other Changes in the Work would increase the Contract Sum to \$1,000,000.00 or more, the total of all Change Orders, Construction Change Directives, or other Changes in the Work may not increase the Contract Sum by more than 25% of the original Contract Sum. Any Change Order, Construction Change Directive, or other Change in the Work that would exceed that limit is void and of no effect.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;

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

§7.2.2 In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or be the basis of 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 prior to the commencement of such modified or changed Work. 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.

§7.2.3 Contractor stipulates that 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 and attorney's fees and costs arising from a dispute with a Subcontractor or Sub-subcontractor over the Change Order.

§ 7.2.4 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon (additional mark-ups for overhead, profit and fees will not be allowed);
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, subject to the limitations of Section 7.1; or
- .4 As provided in Section 7.3.4, subject to the limitations of Section 7.1.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, then the adjustment shall be determined by the Architect on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. Direct costs shall be limited to the following to the extent such costs are reasonable:

- .1 Actual costs of labor, including applicable payroll taxes, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Actual costs of materials, supplies, and equipment, including cost of transportation, used in performing the change in the Work;
- .3 Actual rental costs of machinery and equipment rented from third parties, 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; and
- .4 Actual costs of premiums for all bonds and insurance, and permit fees, directly related to the change.

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved regardless of the Contractor's agreement with or disagreement with the adjustment in the

Contract Sum or Contract Time or the method for determining them and shall promptly advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus the Contractor's allocated percent of profit and overhead as confirmed by the Architect.

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

(Paragraph deleted)

§ 7.4 Minor Changes in the Work

The Architect may, subject to Owner approval, order minor changes in the Work that are consistent with the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum, Allowances, Contingencies, or Contract Time, the Contractor shall notify the Architect in writing and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum, Allowances, Contingencies, or Contract Time, and written instruction from the Architect to proceed, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Owner shall also retain authority to order such minor changes in the Work. The Contractor shall carry out such written orders promptly. 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.

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 Final Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the first business day after Contractor's receipt of the written Notice to Proceed. The Notice to Proceed shall not be issued by the Architect until the Agreement (or Amendment Number 1, if Contractor is a Construction Manager at Risk) has been signed by the Contractor, approved by Owner's Board of Trustees (unless otherwise delegated), signed by the Owner's authorized representative, and Owner and Architect have received, and approved as to form, all required payment and performance bonds and insurance, in compliance with Article 11. Issuance of the notice to proceed shall not relieve the Contractor of its responsibility to comply with Article 11.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect and approved by the Owner in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect and Owner in accordance with Section 9.10. Unless otherwise agreed in writing by the Owner, the Contractor agrees that Final Completion shall occur not more than thirty (30) calendar days after the date of Substantial Completion.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner's approval of such insurance.

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

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion or the date of Final Completion.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an authorized employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by fire, governmental actions, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's reasonable control which do not arise through the action or inaction of Contractor or its Subcontractor, Sub-subcontractor or suppliers, could not have been reasonably anticipated, and could not have been avoided through the exercise of reasonable care or prudent construction management by the Contractor; (4) by delay authorized in writing by the Owner; or (5) by other causes that the Contractor asserts, and the Architect and Owner determine, justify delay, then the Contract Time may be extended for such reasonable time as the Architect and Owner may determine. The foregoing notwithstanding, the Contractor shall not be entitled to an extension of time for changes in the Work required due to Contractor fault, or which extend beyond the time extension provided in a Change Order. Nothing in this provision will limit the rights of Owner under other provisions of this Contract. Any provision of the Contract Documents to the contrary notwithstanding, it is expressly agreed that the extension of the Contract Time shall be Contractor's sole remedy for any delay unless the same shall have been caused by acts constituting interference by the Owner which materially interfere with Contractor's performance of the Work, and then only to the extent that such acts continue after Contractor's reasonable prior written notice to Owner of such interference.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. A disagreement concerning time extensions shall not relieve the Contractor from performing the Work required by the Contract Documents and shall not be cause for the Contractor to suspend Work on the Project.

§ 8.3.3 The Contract does not permit the recovery of damages, including, without limitation, extended home office overhead expenses, general conditions or other consequential damages, by the Contractor for delay or disruption or for extensions of time due to bad weather or acts of God. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time. Owner's exercise of any of its rights under the Contract Documents, including without limitation, its rights under Article 7, Changes in the Work, regardless of the extent or number of such changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not, under any circumstances, be construed as interference with Contractor's performance of the Work and shall not entitle the Contractor to any additional compensation.

§ 8.3.4 In the event of inexcusable delay by Contractor, Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts or re-sequencing of the Work. All such acceleration shall be at no cost to Owner.

§ 8.3.5 In the event that Contractor does not complete the Work within the Contract Time, then in addition to any other costs and damages (liquidated or otherwise) for which Contractor is responsible, Contractor will provide, at its expense, any bonds required by governmental authorities to enable Owner to secure a Certificate of Occupancy (if required) even though there are items of Work which are incomplete.

§ 8.3.6 The Contractor's claims related to time shall be made in accordance with applicable provisions of the Contract Documents or they shall be deemed waived.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum, or if the Project is a Construction Manager at Risk Project, Guaranteed Maximum Price, is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices may, by mutual written agreement, be equitably adjusted.

§ 9.1.3 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its material obligations hereunder or is otherwise in default under any of the provisions of the Contract Documents, subject to the requirements of applicable law.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a Schedule of Values to the Architect and the Owner before the first Application for Payment, or in the case of a Guaranteed Maximum Price, within 15 days after establishing the Guaranteed Maximum Price, allocating the entire Contract Sum to the various portions of the Work. The Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect and the Owner. This Schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the Schedule of Values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Schedule of Values shall be prepared in such a manner that each major item of Work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G732 and G703 shall be used.

§ 9.2.2 In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703 (or G732 and G703, as applicable), and shall include the following:

- .1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.
- .2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.
- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).
- .4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.
- .5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.
- .6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors, Sub-subcontractors, and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 Contractor agrees that, for purposes of Texas Government Code Sections 2251.021 and 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Certificate for Payment from the Architect shall be construed as receipt of an invoice by the Owner, for purposes of Texas Government Code Sections 2251.021 and 2251.042.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not been invoiced by a Subcontractor, Sub-subcontractor, or supplier, unless Contractor has self-performed the Work.

§ 9.3.1.3 Until Final Completion of the Work, the Owner shall withhold retainage as provided in the Contract Documents, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein in Section 9.4.3 or 9.5. The retainage shall be paid with the Final Payment. (Note: if more than 5% is retained, under Texas law, then the retainage must be placed in an interest-bearing account, and the contractor must be paid the interest earned on the retainage upon completion of the Work. Texas Government Code Section 2252.032).

§ 9.3.1.4 All progress payment requests shall be accompanied by (i) an itemization of all Subcontractors, Sub-subcontractors, and suppliers, the amounts due each, and the amounts to be paid out of said progress payment to each of them and (ii) by unconditional lien waivers releasing all liens and lien rights with respect to Work for which Owner has made payment under a prior progress payment request in a form reasonably satisfactory to Owner from Contractor and all its subcontractors and material suppliers with contracts in excess of \$25,000.00 (Evidence of prior progress payment shall apply to progress payments 61-days or older). When Contractor submits its request for payment of retainage, Contractor shall submit "All Bills Paid" affidavits and unconditional final lien waivers fully releasing all liens and lien rights with respect to the Work in a form reasonably satisfactory to Owner from Contractor and all its Subcontractors, Sub-subcontractors, and suppliers with contracts in excess of \$25,000.00. Applications for Payment shall be certified as correct by Contractor. Each Application for Payment shall also be accompanied by Certified Payrolls (if Davis-Bacon Act is applicable) and such other affidavits, certificates, information, data, and schedules as Owner may reasonably require. The Owner is not required to make any payment to Contractor to the extent reasonably necessary to protect Owner.

§ 9.3.2 Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time is an additional service and shall compensate Architect directly for same.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 9.3.3 The Contractor warrants that title to all Work, materials, and equipment covered by an Application for Payment will irrevocably pass to the Owner no later than the time of Owner's payment to Contractor of the invoiced cost. 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. The Contractor further warrants that, upon submittal of an Application for Payment, all Work, materials, and equipment for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, Sub-subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR WORK, MATERIALS, EQUIPMENT, OR OTHER ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

§ 9.3.4 Contractor shall submit Applications for Payment in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G732 and G703, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

§ 9.3.5 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, equipment, and supplies identified in the Applications for Payment have been purchased, paid for and received; that the Subcontractors, Sub-subcontractors, and suppliers have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that Contractor 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, Sub-subcontractors, suppliers, 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 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.

§ 9.3.6 Contractor's request for payment of the retainage may be made only upon expiration of thirty (30) calendar days after Final Completion. The request shall be accompanied by the Contractor's Affidavit of Payment of Debts and Claims or a comparable affidavit on a form acceptable to Owner. This document must be executed under oath and notarized.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment: (1) certify, sign, and issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) certify, sign, and issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1; or return the Payment Application to the Contractor as provided in Section 9.3.4. Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code Section 2251.042 *et seq.* The Owner shall have the right to reject, modify, or approve the Architect's Certificate for Payment in whole or in part, and shall have the right to make the final determination of the payment to be made to the Contractor.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner that, the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion, the

Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the amounts requested in the Application for Payment have been critically evaluated and certified and are valid and correct. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect in writing to the Owner. 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, Sub-subcontractors, and suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid and shall be a prerequisite to any payment being made by the Owner to the Contractor. The Certificate of Payment is not binding on the Owner, and the Owner may rely on other provisions of the Contract Documents, as well as the Architect's Certificate, and on other information known to the Owner to determine the amount to be paid to or withheld from the Contractor.

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors, Sub-subcontractors, or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time; or
- .9 failure to provide any submittals or documentation required under the Contract Documents in a timely manner, including a schedule of values and a construction schedule.

§ 9.5.2 If the Contractor disputes the Architect's or Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

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

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these General Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to any provision of the Contract Documents or withholding in reliance on any

such Contract Document provision in good faith, or withholding, in good faith, in reliance on information that has come to the attention of the Owner that Owner reasonably believes constitutes sufficient reason to withhold payment, and no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment for undisputed amounts, the Owner shall review the Application for Payment and the Architect's Certificate and shall make payment or withhold payment in the manner and within the time provided in the Contract Documents, and shall notify Contractor within 21 days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code Section 2251.042 et seq, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 The Contractor will receive the payments made by Owner and will hold such payments in trust to be applied first to the payment of Subcontractors, Sub-subcontractors, suppliers and any other parties furnishing labor, materials, equipment or services for the Work in accordance with the provisions of their subcontracts. The Contractor shall pay each Subcontractor, Sub-subcontractor, and supplier, no later than seven days after receipt of payment from the Owner and before using any part of the payment from the Owner for any other purpose, the amount to which such party is entitled, reflecting percentages actually retained from payments to the Contractor on account of such party's portion of the Work, and shall, if requested, provide the Owner with evidence of such payment. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner, and if the Owner so requests, shall provide to the Owner copies of such Subcontractor payments. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors, Sub-subcontractor, 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. This Section is subject to the provisions of Texas Business and Commerce Code Chapter 56.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors, Sub-subcontractors, and suppliers' amounts paid by the Owner to the Contractor for subcontracted Work. The Owner shall have the right at all times to contact Subcontractors, Sub-subcontractors, and suppliers to ascertain whether they have been properly paid. Progress payments may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties. In the event Owner receives any notices of nonpayment from parties furnishing labor, materials, equipment, or services for the Work, progress payments and/or Final Payment may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties for such amounts as the Contractor agrees or the Owner determines are due. Notwithstanding any other provision in the Contract Documents, neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor, Sub-subcontractor or supplier. Action on the part of the Owner to require Contractor to pay a Subcontractor, Sub-subcontractor, or supplier shall not impose any liability on Owner.

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

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

§ 9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract, provide to the Owner payment and performance bonds in accordance with the terms and provisions of the Contract Documents, including Article 11 herein, and in accordance with Texas Government Code Chapter 2253. Payments received by the Contractor from the Owner for Work properly performed by Subcontractors, Sub-subcontractors, or provided by suppliers shall be held in trust by the Contractor for the benefit of those Subcontractors, Sub-subcontractors, or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.6.8 Contractor shall not withhold as a retainage a greater percentage from Subcontractors or materialmen than the percentage that Owner withheld as retainage from payments to Contractor.

§ 9.7 Failure of Payment

§ 9.7.1 Pursuant to Texas Government Code Section 2251.051, if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) additional days' notice to the Owner and Architect that payment has not been made and the Contractor intends to suspend performance for nonpayment, may, subject to applicable law, stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Architect does not issue a Certificate for Payment within seven (7) days after receipt of the Contractor's Application for Payment, through no fault of the Contractor, then the Contractor shall provide written notice to the Owner, and the Owner shall have fourteen (14) Business Days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment, then the Contractor may, upon fourteen (14) additional Business Days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received.

§ 9.7.3 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, pursuant to the Contract, or the Owner incurs any costs or expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion and without waiving any other remedies, 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 to which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; operation and maintenance data shall have been submitted and approved; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial demonstration and instruction of Owner's personnel in the operation of Project systems has been completed; all the required final finishes set out in the Construction Documents are in place; and all major punch-list items and a majority of minor items of a cosmetic nature have been completed and accepted by Owner. A Certificate of Occupancy shall have been issued before Substantial Completion can be achieved. The only remaining Work shall be minor in nature so that the Owner can occupy or otherwise utilize the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's (or those claiming by, through or under the Owner) normal school or other business operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work shall be completed within 30 consecutive calendar days after the date of Substantial Completion. All work that could interfere with the Owner's use following Substantial Completion shall be performed by the Contractor after hours at no additional expense to the Owner.

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

1. All fire alarm system components must be completed and demonstrated to the Owner.
2. Local fire marshal approval certificate must be delivered to the Owner.
3. All HVAC air and water balancing must be complete.
4. All Energy Management Systems must be complete and fully operational and demonstrated to the Owner.
5. All school communications equipment and telephone systems must be complete and demonstrated to the Owner.
6. All final lockset cores must be installed.
7. All room plaques and exterior signage must be complete.
8. All Owner demonstrations and training must be completed, including kitchen equipment, HVAC equipment, plumbing equipment, and electrical equipment.
9. All exterior clean-up and landscaping must be complete.
10. All final interior clean-up must be complete.
11. A final Certificate of Occupancy conforming to the requirements of the location jurisdictional authority must be signed by the Contractor and delivered to the Owner.
12. All operation and maintenance manuals must be complete and delivered to the Owner.
13. Flood elevation certificate furnished and accepted by all authorities having jurisdiction, including, but not limited to City of Galveston and/or Galveston County.

§ 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. The Architect and/or Owner shall have the right to add additional items to be completed or corrected to the comprehensive list submitted by the Contractor.

§ 9.8.2.1 The Contractor's project manager or superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and Owner for supplementation. Upon receipt, the Architect shall perform a spot review to determine the adequacy and completeness of the Contractor's punch list. 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 further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the Work to be done.

§ 9.8.2.2 Upon receipt of an acceptable Contractor's punch list, the Contractor's superintendent or project manager shall accompany the Architect, its Consultants and the Owner (at the Owner's discretion) during their inspections and the preparation of verbal or written additions to the Contractor's punch list. The Contractor's project manager or superintendent shall record or otherwise take notes of all supplementary items and incorporate them into the Final Punch List. A typed addition to the supplements to the punch list will be made by the Contractor. This procedure will produce a Final Punch List that has the Contractor's, Architect's, Consultants' and Owner's comments incorporated in only one list. Delay in the preparation of the Final Punch List shall not be cause for a claim for additional cost or extension of time as the Contractor's superintendent or Project Manager shall have been in attendance during the inspections of the Architect and its consultants and will have been expected to have taken appropriate notes.

§ 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, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Except with the consent of the Owner, the Architect shall perform no more than three (3) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. Any fee which Owner incurs for additional site visits of Architect for determination of Substantial Completion will be at the expense of Contractor. Owner will deduct the amount of Architect's compensation for re-inspection services from Final Payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare, sign, and issue Owner's Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the Final Punch 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.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.5.1 After the date of Substantial Completion of the Work as evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) calendar days, unless extended by mutual agreement or provision of the Contract, within which to complete all Work and correct all deficiencies contained in the Final Punch List attached to the Certificate of Substantial Completion. Failure by 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 ten (10) additional calendar 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 thirty (30) calendar 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 re-inspection after notification by the Contractor that corrections are complete; the cost of subsequent inspections shall also be deducted from funds remaining unpaid to the Contractor.

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, at its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted. Final Completion includes submittal of all required closeout and record documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work, provided such occupancy or use is consented to by the insurer, if such consent is necessary, 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 that the Owner accepts in writing the responsibilities for security, maintenance, heat, utilities, damage to the Work resulting from such occupancy, use, or installation, and property and liability insurance. 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 or Owner. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

§ 9.9.2 Immediately prior to such partial occupancy, use, or installation, 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 in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract Documents, nor shall it constitute evidence of Substantial Completion or Final Completion.

§ 9.9.4 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if the Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 When all of the Work is finally completed, all required documentation has been submitted, and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance, the Architect will promptly make

such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Contractor shall issue its final Application for Payment. Upon the Architect's agreement and approval, the Architect will promptly prepare, sign, and issue Owner's Certificate of Final Completion and a final Certificate for Payment certifying to the Owner that on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance, including all retainages, found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Owner may rely on other provisions of the Contract Documents, as well as the Architect's certifications, in determining the payment to be made to Contractor. Final Payment shall be made by the Owner in accordance with Owner's regular schedule for payments. The Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine Final Completion. Any fee which Owner incurs for additional site visits of Architect for determination of Final Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for re-inspection services from final payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

§ 9.10.2 Neither Final Payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) using AIA Document G706, 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) evidence satisfactory to Owner that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) using AIA Document G707, Consent of Surety, if any, to Final Payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) except for amounts currently withheld by the Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A, notarized subcontractor lien releases, and other receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract or the Work, to the extent and in such form as may be designated by the Owner. If a Subcontractor, Sub-subcontractor, or supplier refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- .1 Written certifications required by Sections 10.5, 10.6, and 10.7
- .2 Final List of Subcontractors (AIA Document G705);
- .3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at www.tea.state.tx.us/school.finance/facilities/cert_2004.pdf;
- .4 Contractor's and other required warranties, organized as required elsewhere in the Contract Documents;
- .5 Maintenance and Instruction Manuals;
- .6 Owner's Final Completion Certificate; and
- .7 Record drawings and "as built" drawings as required elsewhere in the Contract Documents.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final Payment shall be paid by the Owner to the Contractor within thirty (30) days after Owner's Board of Trustees has voted to accept the Work and approve Final Payment, unless otherwise delegated.

§ 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, if necessary, written consent of the surety, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted, less retainage. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted

by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment, and it shall not constitute a waiver of claims by Owner. Nothing in this subsection is intended to limit or reduce Owner's rights and remedies in the event of a Contractor default.

§ 9.10.4 The making of
(Paragraphs deleted)

Final Payment shall not constitute a waiver of any claims, rights or remedies by the Owner.

§ 9.10.5 Acceptance of Final Payment by the Contractor, a Subcontractor, a Sub-subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously asserted pursuant to Article 15 and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 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, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et seq., and all amendments thereto. However, the Contractor's performance of its obligations under Article 10 shall not relieve any Subcontractor, Sub-subcontractor, supplier, or any other person or entity, of their responsibilities for the safety of persons and property and for compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, nor shall any such party be relieved from the obligation to provide for the safety of their employees, persons and property and their requirements to maintain a work environment free of recognized hazards.

§ 10.1.2 Contractor's employees, agents, Subcontractors, Sub-subcontractors, suppliers or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service for Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of warnings on medications while performing the Work or on Owner's premises.

§ 10.1.3 Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, Subcontractors, Sub-subcontractors, suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, 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 any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed 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 person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work, school personnel, students, and other persons on or off Owner's premises who may be affected thereby, including the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational or other facility;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, a Sub-subcontractor, or a supplier; and
- .3 other property at the site or adjacent thereto, such as other buildings and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall also do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason. Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes full possession of and occupies that portion of the Project.

§ 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. The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The 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 load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

(Paragraphs deleted)

§ 10.2.8 The Contractor shall be responsible for taking all precautions necessary to protect the Work in place from any foreseeable weather conditions which could cause any potential damage to portions or all Work in place or to other portions of the Project. The Contractor shall be responsible for performing all repairs and/or replacement of any Work that results from foreseeable weather conditions, and shall also be responsible for all repairs and/or replacement of any other portions of the Project to the extent such repairs and/or replacement are required as a result of Contractor's failure to properly secure the Work or otherwise take precautions with respect to the Work as required under this Section 10.2.9.

§ 10.2.9 Injury or Damage to Person or Property

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts and omissions such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. Provided, however, Contractor understands that, under Texas law, Owner has tort immunity.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. If Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has a reasonable objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume within a reasonable time to be determined upon written agreement of the Owner and Contractor. The Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion to the extent of any delay directly attributable to efforts to remove or safely contain a material or substance as required hereunder.

§ 10.3.3 IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SECTION 3.18.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site.

(Paragraphs deleted)

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss.

§ 10.5 Materials Containing Asbestos, Lead or PCB's

§ 10.5.1 As part of submittals under the section in the Project Manual related to Contract Closeout, and prior to Final Payment and payment of retainage, the Contractor and, as applicable, each Subcontractor, Sub-subcontractor and supplier shall submit all applicable MSDS and a notarized statement on company or other official letterhead certifying to the best of their information, knowledge and belief, that no lead, asbestos, asbestos-containing (or, under reasonably foreseeable conditions, releasing) materials or PCBs 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, have been used or incorporated into the Work, and lead or lead-bearing (or, under reasonably foreseeable conditions, releasing) materials have not been incorporated into potable water systems. As used in this statement, the term "potable water systems" shall include, without limitation, those water systems for drinking fountains, all sinks, showers, bath tubs, residential and commercial kitchen equipment, ice machines, and hose bibs, as applicable to the Project. The notarized statement shall further state that, should any such materials be found in any of the Work in contravention of the notarized statement, then Contractor shall be responsible for taking all necessary corrective action to remove those materials from the Work, at no additional cost to the Owner. The notarized statement shall be dated, shall reference this specific

Project, and shall be signed by not less than two (2) officers of the Contractor or the applicable Subcontractor, Sub-subcontractor, or supplier.

§ 10.5.2 To the best knowledge of the Owner, the Architect and his consultants, no products or materials containing asbestos or polychlorinated biphenyl (PCB) or other toxic substances have been specified for this Project. In the event the Contractor, its Subcontractors, Sub-subcontractors, or suppliers become aware that any products or materials specified, ordered, scheduled for or already incorporated in the Work on this Project, contain any hazardous material, whether stated in Section 10.4.1 or not, the situation shall be reported immediately to the Owner and Architect in writing. An acceptable, equal substitute for the product or material in question shall be proposed by the Contractor, and the product or material in question, if already onsite or incorporated in the Work, shall be removed from the site immediately and returned to the supplier or manufacturer.

§ 10.5.3 Final Payment and payment of retainage shall not be made until the information and notarized statements required under Section 10.5 have been received by Owner.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, its trustees, officers, employees, agents, and representatives, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Without limiting or waiving Owner's right to earlier notice of any modification, termination, or expiration of insurance coverages as provided in the Contract Documents, immediately upon the date the Contractor becomes aware of an impending or actual cancellation or expiration or other lapse of any insurance required by the Contract Documents, the Contractor shall provide written notice to the Owner of such impending or actual cancellation or expiration or other lapse. Upon receipt of notice from the Contractor, the Owner shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

(Paragraphs deleted)

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If the Contract Documents specify, or the Architect or Owner requests, that certain Work shall not be covered until the Architect has had an opportunity to examine such Work, the Contractor shall notify the Architect in writing a minimum of 48 hours prior to covering up any such Work in progress in order for the Architect to make proper field observations of the Work in place. The Contractor shall place no concrete, fill-in ditches, or cover up walls or ceilings without first contacting the Architect as noted above and receiving approval. If a portion of the Work is covered

contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered and the Contract Documents do not specify otherwise and the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor may be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate for the actual cost to uncover and replace such Work. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction and replacement, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.1.2 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such nonconforming condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct in accordance with Section 2.4 nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. 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.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

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

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, but only as to that corrected Work.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or by defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors and Sub-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, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, then an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such agreement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The agreement 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.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Galveston County, or, if no county is specified, then the county in which the Owner's main administrative office is located.

§ 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. Except as expressly provided otherwise in the Contract Documents, neither party to the Contract shall assign the Contract, in whole or in part, without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals, which shall be included in the Cost of the Work. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Owner with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, then the Owner shall provide or contract for such additional testing, inspection, or approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including, but not limited to, those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate provided by Texas Government Code Section 2251.025. Any such payment shall be deemed overdue on the thirty-first day after Owner received Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 Equal Opportunity in Employment

§ 13.6.1 The Contractor and the Contractor's Subcontractors and Sub-subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, national origin, or any other basis protected by law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors and Sub-subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, age, disability, sex, national origin, or any other basis protected by law.

§ 13.7 Records

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

subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

§ 13.7.2 If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.7.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.9.1.

§ 13.7.4 Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.7.5 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 Proprietary Interests and Confidential Information

§ 13.8.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.8.2 Neither Architect nor Contractor shall disclose any confidential information which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.

§ 13.8.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, certain open records laws and other disclosure requirements, including, but not limited to, the Texas Public Information Act, Texas Government Code Section 552, et seq., subpoenas, and court orders. Nothing in the Contract shall be construed as prohibiting Owner from disclosing any information related to or in connection with the Contract in accordance with such requirements, and Contractor hereby waives any claim against and releases from liability Owner, its trustees, officers, employees, agents, and attorneys with respect to any such disclosure.

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

§ 13.10 The Contractor and its employees, agents, consultants, suppliers and subcontractors shall abide by all Owner policies and procedures regarding campus access.

§ 13.11 Contractor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. Contractor hereby certifies and verifies that neither it, nor any of its affiliates, subsidiaries, or its parent company, if any (the "Contractor Companies"), boycott Israel, and Contractor agrees that it and the Contractor Companies will not boycott Israel during the term of the

Contract. For purposes of the Contract, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

§ 13.12 In accordance with Texas Government Code § 2269.054, the Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization.

§ 13.13 It is expressly understood that this Contract is not written for the benefit of third parties.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment of undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, then, after the applicable time period, the Contractor may, upon ten (10) business days notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination.

§ 14.1.4 If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters material to the progress of the Work, the Contractor may, upon twenty (20) additional business days written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors, Sub-subcontractors, or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors, Sub-subcontractors, or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in worker misconduct in violation of Article 3.3.2 or engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain

- gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and subject to any prior rights of the surety, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts earned to the date of termination.

§ 14.2.4 If the costs of finishing the Work, including compensation for the Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

§ 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, by mutual written agreement, be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. No adjustment shall be made to the extent

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

§ 14.5 Termination by the Owner for Non-Appropriation

§ 14.5.1 If the Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, the parties agree that the Contract is a commitment of Owner's current revenue only. As such, notwithstanding any contrary provision of the Contract, any payment obligation(s) of Owner created by the Contract shall be conditioned upon the availability of funds that are duly appropriated and allocated for such purpose. If such funds are not available, as determined by Owner in its sole discretion, Owner shall have the right to terminate the Contract, without default, penalty, or further obligation or liability to Contractor, effective at the end of the period for which such funds are available. In the event this provision is exercised, Owner shall provide written notice of non-appropriation, specifying the effective date of termination, to Contractor as soon as is reasonably practicable.

§ 14.5.2 Upon receipt of notice from the Owner of such termination for non-appropriation, the Contractor shall

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

§ 14.5.3 In case of such termination for non-appropriation, to the extent that funds have been duly appropriated and allocated for such purpose and are available, the Owner shall pay the Contractor for Work properly executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES OF CONTRACTOR

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, interpretation of the Contract terms, a change in the Contract Time, or other relief with respect to the terms of the Contract, the Work, or the Project. The responsibility to substantiate Claims shall rest with the Contractor. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 Time Limits on Litigation

The Contractor shall commence all litigation against the Owner and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution

method selected in the Agreement, if any, and within the period specified by applicable law, but in any case not more than 10 years after the date of Final Completion of the Work. The Contractor waives all claims not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner and to the Architect. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within twenty-one (21) calendar days after occurrence of the event giving rise to such Claim or within twenty-one (21) calendar days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier. Claims must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety-one (91) days after the occurrence of the event giving rise to such claim or within ninety-one (91) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, shall be waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

§ 15.1.3.2 Claims by either the Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner as provided herein. In such event, no decision by the Architect is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time may be adjusted in accordance with the Architect's decision pursuant to Section 15.2, subject to the right of Contractor to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with its decision pursuant to Section 15.2.

§ 15.1.5 Claims for Additional Cost or an Increase in the Contract Sum

If the Contractor wishes to make a Claim for additional cost or for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if otherwise delegated and provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution or other legal remedies as provided for in the Contract Documents.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, such a Claim shall be documented in accordance with Article 8 and notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of the probable effect of the delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and prevented the execution of major items of work on normal working days. Adverse weather conditions means unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year.

§ 15.1.6.2.1 Weather data obtained from the National Oceanic and Atmospheric Administration (NOAA) shall form the baseline for estimating anticipated delays and project durations and determining the occurrence of unusually severe weather. Data in the table below is compiled from the number of days per month that the anticipated weather is expected to be adverse by analysis of NOAA for the Project location. NOAA Climate Normals for IAH have been used to establish the baseline of Anticipated Adverse Weather Days per month associated with the Project schedule duration. The number of Anticipated Adverse Weather Days expected for each month is as follows:

January	6 calendar days	July	6 calendar days
February	6 calendar days	August	6 calendar days
March	5 calendar days	September	6 calendar days
April	4 calendar days	October	6 calendar days
May	6 calendar days	November	6 calendar days
June	7 calendar days	December	6 calendar days

The number of Anticipated Adverse Weather Days shown in the above schedule for the first and last months of the Contract will be prorated in determining the total number of Anticipated Adverse Weather Days during the period of the Contract.

§ 15.1.6.2.2 The Anticipated Adverse Weather Days shall be submitted with the Contractor's construction schedule for documenting future weather events and is considered to be part of the Project duration forming the Contract Time. Although the contractor is required to document the occurrence and effect of adverse weather on the Work, it does not relieve the Contractor or Architect of their respective responsibilities to investigate and determine if an excusable delay has occurred. The schedule of Anticipated Adverse Weather Days included in the Contract is established in work days. Similarly, actual weather data should be collected and recorded on a work day basis. Monthly summaries should be maintained indicating actual adverse weather conditions and the impact on Work activities. To determine if any particular month experienced Adverse Weather Days, the number of actual Adverse Weather Days is compared to that as provided by the Anticipated Adverse Weather Days. If the number of actual Adverse Weather Days is greater than the Anticipated Adverse Weather Days, then the contractor has experienced unusually severe weather. THE DETERMINATION THAT UNUSUALLY SEVERE WEATHER OCCURRED DOES NOT AUTOMATICALLY MEAN THAT THE CONTRACTOR RECEIVES A TIME EXTENSION FOR THE DIFFERENCE OF DAYS BETWEEN THE ANTICIPATED AND ACTUAL ADVERSE WEATHER DELAY DAYS. Further analysis is necessary to determine if the unusually severe weather prevented the execution of major items of Work on normal working days. The contractor's progress schedule must be evaluated to make this determination. No day will be counted as an actual Adverse Weather Day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. If it is found that unusually severe weather actually prevented the execution of major items of Work on normal working days, a Contract Modification may be issued pursuant to Gov. Code 2269. Otherwise, no additional compensation for adverse weather delays/days will be provided.

§ 15.1.6.3 Claims for increase in the Contract Time shall set forth in writing the detail noting the circumstances that form the basis for the claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work, the party responsible for the delay, whether Contractor, Owner, Adverse Weather Days, or other, and the number of days increase in the Contract Time claimed as a consequence of each such cause of delay. Requests for an extension of time pursuant to this Section 15.1.6 shall be submitted to the Architect in writing not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred and shall include documentation demonstrating the nature and duration of the delays or disruptions. Where appropriate, a revised construction schedule indicating all the activities affected by the circumstances shall be included with the documentation. No claims for damages for delay shall be made by Contractor. Any claim not submitted under the terms of this Section 15.1.6.3 shall be waived.

§ 15.1.6.4 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors, Sub-subcontractors, or suppliers or otherwise under Contractor's control. Claims for extension of time may only be considered because of Adverse Weather Days, or hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. Claims for extension of time because of hindrances or delays not the fault of either Contractor or Owner shall be considered, but only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. Unless

otherwise delegated, Board approval shall be required for any extension of time. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives all Claims against Owner for consequential damages arising out of or relating to this
(Paragraphs deleted)

Contract, including, but not limited to, any amount owed as compensation for the increased cost to perform the Work as a direct result of Owner-caused delays or acceleration.

§ 15.2 Resolution of Claims and Disputes

§ 15.2.1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date Final Payment is due, unless thirty (30) days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect will review Claims and within ten (10) days of the receipt of a Claim take one of the following actions: (1) request additional supporting data from the Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

§ 15.2.3 In evaluating Claims, the Architect 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 Architect in making a written recommendation.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days (or in the case of Owner, ten (10) business days) after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished.

§ 15.2.5 Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

(Paragraphs deleted)

§ 15.3 Alternative Dispute Resolution

§ 15.3.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, may upon mutual written agreement, after written recommendation by the Architect or thirty (30) days after submission of the Claim to the Architect, be subject to mediation at the request of either party. Owner and Contractor expressly agree that mediation shall not be a condition precedent to the initiation of any litigation arising out of such Claim. Claims for injunctive relief shall not be subject to this Section.

§ 15.3.2 The parties may endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing to the other party to the Contract. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the mediation shall be conducted by the Center for Public Policy Dispute Resolution at the University of Texas School of Law.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Owner's main administrative office is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of

Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Any claim not resolved in mediation shall be subject to litigation pursuant to Section 13.1.

§ 15.4 No Arbitration

Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. Nothing in the Contract shall be construed as a waiver or relinquishment of any governmental immunities or defenses on behalf of Owner, its trustees, officers, employees, or agents as a result of the execution of the Contract or performance of the functions or obligations described therein.

§ 15.6 In any adjudication under this Agreement, attorneys' fees may be awarded as provided by law.

OWNER *(Signature)*

Ms. Connie Morgenroth
Assistant Superintendent of Business & Operations
Galveston Independent School District

(Printed name and title)

(Date)

CONTRACTOR *(Signature)*

Mr. Tommy Thomas
Vice President
JR Jones Roofing

(Printed name and title)

(Date)

Additions and Deletions Report for AIA® Document A201® – 2017

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

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PAGE 1

Multi-Campus Building Envelope Repairs (Phase 4)
3904 Avenue T.
Galveston, TX 77550

...

Galveston Independent School District
3904 Avenue T.
Galveston, TX 77550

...

PBK Architects, Inc.
dba BEAM Professionals
11 Greenway Plaza, 22nd Floor
Houston, TX 77046

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda all sections of the Project Manual, including Drawings, Specifications, Addenda, and other Construction Documents issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not~~ The Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or ~~proposal~~, or proposal (except to the extent that the proposal has been modified by the terms of the Contract), and portions of Addenda relating to bidding or proposal requirements. Any reference to any Contract Documents shall mean the document as amended and/or supplemented for this Project.

...

The Contract Documents form the Contract for ~~Construction~~ Construction (the "Contract") and are as fully a part of the Contract as if attached hereto or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract ~~may be amended or modified only by a Modification~~. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the

Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.2.1 To be effective, all Contract Documents requiring signatures must be signed first by the Contractor and then by the Owner's authorized representative, after approval by Owner's Board of Trustees, unless otherwise delegated. If an approved Contract Document requiring signature has not been signed, then the missing signature shall be provided within a reasonable period of time. Failure to sign an approved Contract Document after notice and a reasonable opportunity to sign shall be considered a material breach of the Contract. Contractor's signing of the Agreement shall be considered as signing all Contract Documents identified therein.

§ 1.1.2.2 After execution of the original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification signed by Contractor, approved by Owner's Board of Trustees, unless otherwise delegated, and signed by an authorized representative of Owner's Board of Trustees. As a material consideration for the making of the Contract, Modifications to the Contract shall not be construed against the maker of said Modifications.

§ 1.1.2.3 In the event of conflict, terms and conditions contained in the Agreement 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. If the advertisement or invitation to bid and the Contractor's bid or proposal are included in the Contract Documents, then the advertisement or invitation to bid shall take precedence over the Contractor's bid or proposal, unless specifically agreed otherwise herein.

§ 1.1.2.4 Any reference to the Agreement, General Conditions, or any other Contract Document shall mean the document as amended and/or supplemented for this Project.

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items of cost or value needed to produce, construct, and fully complete the public Work identified by the Contract Documents. The Contract Documents include all Construction Documents, such as Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036, and any other standards to which the Architect is subject pursuant to applicable law or contract. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project.

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

...

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 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, all Drawings, Specifications, submittals, transmittals, deliverables, instructions to Contractors, studies, surveys, models, sketches, and other similar materials or documents, including those in electronic form, prepared by the Architect and the Architect's consultants and shall set forth in detail the requirements for construction of the Project.

§ 1.1.8 Project Manual

The Project Manual is a volume assembled for the Work which includes the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.9 Project Manual Addenda

Project Manual Addenda are written, or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding or proposal documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Agreement is executed. The Contractor and subcontractors shall include all addenda items on their copies of the Drawings and Specifications.

§ 1.1.10 Contract Sum

"Contract Sum" shall have the same meaning as in Section 4.1 of the Agreement, except when the Project is a Construction Manager at Risk Project, in which case "Contract Sum" shall have the same meaning as in Section 5.1 of AIA Document A133– 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended for the Project.

§ 1.1.11 Parties

The following definitions apply to parties named in the Contract Documents:

Owner: Galveston Independent School District

Architect: PBK Architects, Inc. dba BEAM Professionals

Contractor: JR Jones Roofing

The Owner may retain Program Manager(s) to carry out some of the functions of the administration of the Owner's construction program. The Contractor, Architect, and Program Manager (when applicable) shall cooperate with each other in the performance of their respective functions. The management and reporting systems used by the Owner and/or Program Manager, including the assignment of the Program Manager, may be changed by Owner during the Project.

§ 1.1.12 Abbreviations

AIA:	<u>American Institute of Architects</u>
AIEE:	<u>American Institute of Electrical Engineers</u>
ACI:	<u>American Concrete Institute</u>
AHERA:	<u>Asbestos Hazardous Emergency Response Act</u>
AISI:	<u>American Iron and Steel Institute</u>
AISI:	<u>American Institute of Steel Construction</u>
AISC:	<u>American Institute of Steel Construction</u>

ANSI:	<u>American National Standards Institute</u>
ASA:	<u>American Standards Association</u>
ASTM:	<u>American Society of Testing Materials</u>
AWSC:	<u>American Welding Society Code</u>
CERCLA:	<u>Comprehensive Environmental Response, Compensation, and Liability Act</u>
EPA:	<u>Environmental Protection Agency</u>
FS:	<u>Federal Specification</u>
NEC:	<u>National Electrical Code</u>
NIC:	<u>Not in Contract (indicates work not to be done by this Contractor under this Agreement)</u>
OSHA:	<u>Occupational Safety and Health Administration</u>
SPR:	<u>Simplified Practice Recommendation</u>
TAS:	<u>Texas Accessibility Standards</u>
UL:	<u>Underwriters Laboratories, Inc.</u>

§ 1.1.13 Miscellaneous Other Words

§ 1.1.13.1 Business Day

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

§ 1.1.13.2 Calendar Day

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

§ 1.1.13.3 Holidays

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

§ 1.1.13.4 Work Day

Work days are all calendar days except Holidays.

§ 1.1.13.5 Anticipated Adverse 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 Adverse Weather Days shall be considered by Owner for time extensions based upon weather. Section 15.1.5.3 lists required Anticipated Adverse Weather Days.

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§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirement, unless the Contractor obtained a decision in writing from the Architect as to what shall govern before the submission of the Contractor's proposal. The Architect, in case of such conflict, may interpret or construe the documents so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interest of Owner, and the Architect's decision shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

...

§ 1.2.4 Relation of Specifications and Drawings

General Requirements in the Specifications govern the execution of all Specifications. Summary paragraphs present a brief indication of the Work, but do not limit the Work as later detailed. The Drawings and Specifications are correlative and have equal authority and priority. Should the Drawings and Specifications have internal inconsistencies, then the Contractor shall base the bids and construction on the most expensive combination of quality and quantity of Work indicated. If Drawings and Specifications are not in concurrence regarding quantity or quality, Contractor shall request interpretation from the Architect. For purposes of construction, the Architect shall determine in writing the appropriate Work, after the Contractor brings the inconsistency to the Architect's attention. Failure to report an inconsistency shall be evidence that Contractor has elected to proceed in the more expensive manner.

§ 1.2.4.1 Drawings are in part diagrammatic, and do not necessarily show complete details of construction, materials, or their performance, or installation, and do not necessarily show how construction details or other items of work or fixtures or equipment may affect any particular installation. These shall be ascertained by the Contractor from the Architect and correlated to bring the parts together to a complete whole.

§ 1.2.4.2 All dimensions shall be verified by field measurements and all work laid out to permit pipes, valves, ductwork, lights, panels, other items of construction, to be located as closely as possible to locations shown. All items shall be checked before installation to determine that they can be concealed properly, if appropriate, and that they clear any structural components, supports for other items, and cabinets and equipment or other mechanical, electrical or architectural items having fixed locations.

§ 1.2.4.3 Work shall be laid out to assure ready accessibility to valves, fittings, and other items requiring servicing, adjustment or checking.

§ 1.2.4.4 Actual physical dimensions of specified stock items shall govern over dimensions shown for work to receive stock items. Custom items or modified stock items shall be fabricated to dimensions shown, or to fit into other dimensioned work.

§ 1.2.4.5 If Work is required in a manner which makes it impossible to produce the specified quality of Work, or should errors, omissions, or discrepancies exist in the Contract Documents, the Contractor shall request in writing an interpretation before proceeding with Work. If Contractor fails to make such a written request, no excuse or claim will thereafter be entertained for failure to carry out Work in a satisfactory manner as specified by Contract Documents. Should conflict occur in or between Drawings and Specifications which should reasonably have been ascertained by the Contractor, Contractor is deemed to have estimated and included in the Contract Sum the more expensive way of doing the Work.

§ 1.2.5 Materials, Equipment and Processes

The mechanical, electrical, and plumbing drawings show the general arrangement and extent of the Work. Exact location and arrangement of the various parts shall be determined with the approval of the Architect after equipment has been selected and as the Work progresses.

§ 1.2.5.1 All Work shall, insofar as possible, be installed in such a manner as will not interfere with architectural or structural portions of the building. Should changes become necessary because of a failure of the Contractor to comply with the bidding instructions concerning equipment requiring area not shown on the Construction Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. The Contractor shall be required to submit material data and drawings on all equipment, which may vary from the Drawings and Project Manual, and any interferences must be eliminated before Work proceeds.

§ 1.2.5.2 Where in the Project Manual, Specifications, and Drawings, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Where particular items are specified, products of those named manufacturers are required unless Contractor submits for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements in the Contract Documents. Contractor shall bear all risk caused by submitting substitutions, including all costs. The Owner may approve substitutions only when the substitution is clearly provided by the Contract to be equal in performance characteristics to the requirements

of the Contract Documents, equally compatible with the existing installations, and complementary to the architectural design for the Work. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment, but shall be obtained by the Contractor from the manufacturer as required for the proper evaluation and/or functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved in advance by the Architect and Owner; however, indicated and specified performance and material requirements are the minimum. The Owner and the Architect reserve the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project in writing.

§ 1.2.5.3 Diagrammatic indications of piping, ducts, conduit, and other similar items are subject to adjustment to obtain required grading, passage over, under or around obstructions, to avoid exposure to finished areas, or unsightly, obstructing conditions. Contractor shall be responsible for coordination of these adjustments and recommending alternate solutions whenever design details affect construction feasibility, costs, or schedules. All manufactured articles, materials, and equipment shall be incorporated into the Work in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.6 Standards and Requirements

When the Work is governed by reference to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, the current edition as of the date of execution of the Agreement shall apply. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

§ 1.2.7 Errors in Construction Documents

The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions. The Contractor stipulates and agrees that the Owner has no duty to discover any errors, inconsistencies, or omissions in the Drawings, Plans, Specifications and other Construction Documents, and has no duty to notify Contractor of same. Owner makes no warranty as to the completeness, adequacy, and accuracy of any Drawings, Plans, Specifications or other Construction Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies, or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Sum due to delays or disruptions to the Work.

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of ServiceConstruction Documents

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership, of the Construction Documents, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service-Construction Documents. The Owner holds perpetual right to use all of the Construction Documents for this Project. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' any reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized-granted a limited license to use and reproduce the Instruments of Service-Construction Documents provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service-Construction

Documents. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the ~~Instruments of Service-Construction Documents~~ on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the ~~Owner, Architect, and the Architect's consultants.~~ copyright holder. All copies of the ~~Construction Documents~~, except the Contractor's record set, shall be returned or suitably accounted for to the copyright holder upon completion of the Work.

...

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered ~~in person, by mail, by courier, or by electronic transmission to the individual for which it was intended in person, by registered or certified mail,~~ return receipt requested, by courier service providing proof of delivery, or by electronic transmission (facsimile or email), with electronic confirmation of receipt, if a method for electronic transmission is set forth in the Agreement. For notices delivered by electronic transmission and received after 5:00 p.m. on a day on which the recipient's offices are open, or on a weekend, Holiday, or other day on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next day on which the recipient's offices are open.

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

...

The parties shall agree upon protocols governing the transmission and use of ~~Instruments of Service-Contract Documents~~ or any other information or documentation in digital form. ~~The parties will use form, including, in the Owner's sole discretion, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~ Notwithstanding any provision herein to the contrary, if the parties agree to an exchange of electronic data/CAD files, such transfer shall be in accordance with the provisions of Rule 1.103(d) of the Rules and Regulations of the Texas Board of Architectural Examiners. In this regard, the seals and signatures shall be removed from any Drawings or Project Manual and the following statement substituted: The record copy of this Drawing or Project Manual is on file at the Architect's office. This electronic document is released for the purposes of reference, coordination and/or facility management under the authority of Texas Registration Number Architect License No. (insert License #). Any modification of this Drawing or Project Manual shall be in compliance with the Texas Board of Architectural Examiner's rules.

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Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, ~~Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, Section 1.7, above, or any use of Contract Documents or any other information or documentation in digital form inconsistent with those protocols set forth in Section 1.7, above,~~ shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Parties to Consult

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

§ 1.9.2 Contractor acknowledges that the Contract Sum reflects Owner's absolute budgetary limit for the Costs of the Work. Should the Contractor become aware of circumstances with respect to the Work that, if not addressed or remedied would lead to a cost overrun, it shall immediately notify Owner and Architect of the existence of such circumstances and its recommendation for addressing the circumstances, including any possible elimination or offset

of the cost overrun. If at any time circumstances arise that might result in the Contract Sum being exceeded, the Owner, Contractor and Architect shall consult and revise the Drawings and Project Manual (including, but not limited to consideration of substitutions of materials) in such fashion as to cause the Work as revised to be accomplished for the Contract Sum; provided that no such revision shall result in a material diminishment of the square footage of the instructional facilities.

...

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement Board of Trustees of the Galveston Independent School District, and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express ~~All parties understand that only the Board of Trustees acting as a body corporate has the authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~ Board's approval under current policy of the Board of Trustees, including, but not limited to, a Change Order or Construction Change Directive modifying the Contract Sum or an extension to the date of Substantial or Final Completion. The Board of Trustees may designate in writing one or more persons to represent the Owner and act on its behalf for such matters, as well as day-to-day operations under the Contract, in accordance with the current policy of the Board of Trustees; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Neither Architect nor Contractor may rely upon the direction of an employee of Owner who has not been designated as set forth herein, and Owner shall not be responsible, financially or otherwise, for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner with respect to matters requiring Owner's approval or authorization. The Owner has contracted with the Architect who will carry out the functions of administration of the Project and the initial arbiter of Claims as identified in Section 15.2.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. Contractor acknowledges that no lien rights exist with respect to public property. The presence of the Owner, the Owner's representative(s) or Architect at the Work site does not imply acceptance or approval of the Work.

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

Intentionally deleted.

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

~~§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

~~§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

~~§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures-structures, or for permanent changes in existing facilities. Contractor shall pay for all permit fees and inspection fees required for performance of the Work other than inspection and testing fees which the Owner contracts for separately with a third party, and Certificates of Occupancy fees. All of such fees shall be considered Cost of the Work unless the Contractor is required to pay for them without reimbursement due to the Contractor's fault under other provisions of the Contract Documents.~~

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~~§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if a new Architect has been employed by Owner.~~

~~§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations. If requested in writing by the Contractor prior to the start of the Work, the Owner shall furnish surveys known to the Owner describing physical characteristics, legal limitations, and utility locations for the site of the Project, Project and a legal description of the site. Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes, or pipelines, or the presence or absence of easements. The Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall and shall exercise proper diligence and take appropriate precautions relating to the safe performance of the Work. THE OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR GUARANTY TO CONTRACTOR OR TO ANY OTHER PERSON THE RELIABILITY, CONSTRUCTABILITY, COMPLETENESS, OR ACCURACY OF ANY SURVEYS, REPORTS, STUDIES, TESTS, ARCHITECTURAL OR ENGINEERING PLANS, OR SIMILAR INFORMATION PROVIDED BY OWNER IN CONNECTION WITH THIS CONTRACT, NOR DOES THE OWNER REPRESENT, WARRANT OR GUARANTY THAT SUCH INFORMATION IS FREE FROM DEFECTS, ERRORS OR DEFICIENCIES, AND ALL SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES ARE HEREBY EXPRESSLY DENIED AND DISCLAIMED. The Owner shall not be liable to the Contractor or any other person for breach of warranty or misrepresentation in the event of any errors or deficiencies in such information provided to the Contractor by the Owner. The Owner's provision of a survey will not relieve the Contractor from its obligations to examine the site or exercise proper precautions relating to the safe performance of the Work.~~

~~§ 2.3.5 The Owner shall furnish information-Information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services shall be furnished by the Owner within a reasonable time following actual receipt of a written request. Absent such timely request by Contractor, any Claim based upon lack of such information or services shall be waived.~~

~~§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The cost of reproductions will be borne by the Contractor.~~

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If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or 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, non-conforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by the Contract or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to 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. This right shall be in addition to, and not in restriction of, the Owner's rights under Section 12.2.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period fails, after receipt of notice from the Owner-Owner, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts Amounts charged to the Contractor are both subject to prior approval of the Architect and an appropriate Change Order shall be issued or the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable actual cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's and other consultants' additional services and expenses made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner-Owner within thirty (30) days after receipt of written notice from the Owner therefor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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§ 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-representative, and includes the Construction Manager at Risk, if applicable.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents Documents and in a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship. Workmanship shall be of a quality to produce first class results. This shall mean that all material shall be installed in a true and straight alignment, level and plumb, patterns shall be uniform, and jointing of materials shall be flush and level unless otherwise directed in writing by the Architect. All labor shall be performed in the best manner by laborers, workers, and mechanics skilled in their respective trades.

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

§ 3.1.4 By submission of a proposal, the Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work: (1) that the Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents; (2) that the Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor required to timely complete the Work and perform its obligations hereunder and that the Contractor is sufficiently experienced and competent to do so; (3) that the Contractor is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public, and quasi- public authorities having jurisdiction over the Contractor, the Work, or the site of the Project; and (4) that the execution of the Contract and its performance thereof are within the Contractor's duly-authorized powers.

§ 3.1.5 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 the Contract 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.

§ 3.1.6 Contractor, its Subcontractors, Sub-subcontractors, suppliers, and other vendors shall bear responsibility for compliance with all applicable state and federal laws, regulations, guidelines, and ordinances applicable to the Work, including but not limited to, laws concerned with labor, equal employment opportunity, safety, minimum wages, and prevailing wage rates under Chapter 2258 of the Texas Government Code. Contractor further recognizes that the Owner and Architect do not owe the Contractor or any Subcontractor, Sub-subcontractor, supplier, or other vendor any duty to supervise or direct its work so as to protect such party from the consequences of its own conduct. Without limiting the foregoing, the Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.1.7 The Contractor shall disclose the existence and extent of any financial interests, whether direct or indirect, such Contractor may have in any Subcontractor, Sub-subcontractor, supplier, and other vendor which the Contractor may propose for the Project.

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

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§ 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. The Contractor represents and warrants by submission of a proposal that the Contractor has carefully examined the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports, and the site of the Work, and that, from the Contractor's own investigations, the Contractor is satisfied as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions and all other materials which may in any way affect the Work or its performance.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, Section 2.3.4. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. The Contractor shall take field measurements of any existing conditions related to that portion of the Work, and shall observe-observe and verify any conditions at the site affecting it-it, and carefully compare them to the Construction Documents, and any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, locations, and other conditions shall be promptly rectified by the Contractor without any additional cost to the Owner. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering-discovering errors, omissions, or inconsistencies in the Contract Documents. The Contractor shall, as part of the Contractor's preconstruction services, in reviewing the Contract Documents, endeavor to detect any errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect design and other Contract Documents which may affect the performance or constructability of the Work and promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 ~~The Contractor is not~~ Neither the Owner nor the Contractor is required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and the Owner any nonconformity in the Contract Documents with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities that is discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require.

§ 3.2.4 ~~If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~ 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 an applicable warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for its position.

§ 3.2.5 The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including: (1) The location, condition, layout, drainage and nature of the Project site and surrounding areas; (2) Generally prevailing climatic conditions; (3) Anticipated labor supply and costs; (4) Availability and cost of materials, tools and equipment; and (5) Other similar issues.

§ 3.2.6 The Contractor shall make a reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation or initiating a Request for Information (RFI). The Contractor shall not ask the Architect for observation of Work prior to the Contractor's field superintendent's personal inspection of the Work. If, in the opinion of the Architect or the Owner, the Contractor does not make a reasonable effort to comply with the above requirements or such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation, and this causes the Architect or its Consultants to expend additional time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's and its Consultant's additional services and expenses made necessary by the Contractor's failure and the Owner shall be entitled to deduct such amounts from the Contract Sum. The Architect will give the Contractor prior notice of intent to bill for additional services and expenses before additional services are performed or additional expenses are incurred.

§ 3.2.7 Contractor shall not perform any Work that may be affected by any condition or circumstance for which Contractor is required to notify the Architect and Owner under this Section 3.2 without further written instructions to Contractor or revised Construction Documents from the Architect. If the Contractor believes that additional Contractor cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Section 3.2 the Contractor shall notify the Owner prior to incurring such additional cost or expending such additional time and, if any necessary changes, including substitution of materials, are not accomplished by appropriate Modification, Contractor may submit Claims as provided in Article 15. The Contractor shall not be entitled to any additional time, compensation, or other allowance for any error, negligence, or additional Work caused by Contractor's failure to visit the site, verify site conditions, and thoroughly study and compare the Construction Documents as required under this Section 3.2.

§ 3.2.8 If the Contractor fails to perform the obligations of this Section 3.2, the Contractor shall also be responsible for paying such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations, including any extra efforts as required to bring the project back into alignment with the original schedule. Without limiting the foregoing, the Contractor shall be liable to the Owner for damages resulting

from errors, inconsistencies or omissions in the Contract Documents, differences between field measurements or conditions and the Contract Documents, nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, and limitations of the Contractor's ability to satisfactorily perform the Work or to honor an applicable warranty, and limitations of or interference with the Owner's intended use, caused by products or systems specified when: (1) such errors, inconsistencies, omissions, differences, nonconformities, or limitations are the fault of Contractor, in whole or in part, (2) the Contractor failed to discover such errors, inconsistencies, omissions, differences, nonconformities, or limitations due to its failure to properly perform the obligations of Section 3.2, (3) the Contractor recognized such errors, inconsistencies, omissions, differences, nonconformities or limitations and failed to report them to the Architect and the Owner, or (4) the Contractor should have detected such errors, inconsistencies, omissions, differences, nonconformities, or limitations as part of Contractor's performance of its obligations under the Contract Documents, including the performance of Contractor's preconstruction services.

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

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. ~~The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its Contractor shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed without acceptance of changes proposed by the Contractor, the Contractor shall not be responsible for any resulting loss or damage to the extent that the acceptance of Contractor's proposed alternative means, methods, techniques, sequences, or procedures would have avoided such loss or damage.~~

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§ 3.3.2.1 Contractor shall, before any duties are performed on Owner's property where students are present, and at least annually thereafter, obtain all criminal history information required by Texas Education Code Chapter 22; unless Owner, in its sole discretion, determines in writing that an exception applies under Section 22.08341(c) of the Texas Education Code, subject to Contractor's and all Subcontractors' compliance with Section 22.08341(i) of the Texas Education Code. If Contractor is required by Chapter 22 to obtain the information from the Fingerprint-based Applicant Clearinghouse of Texas, then Contractor will also subscribe to that person's criminal history record information. Before beginning any Work on the Project, Contractor will provide written certification to the Owner that Contractor has complied with the statutory requirements as of that date. The form of certification by the Contractor shall be supplied by the Owner and

must be supplemented by the Contractor as required by law, or as requested by Owner. Upon request by Owner, Contractor will provide, in writing, updated certifications and the names and any other requested information regarding individuals to whom Chapter 22 applies, so that the Owner may obtain criminal history record information on such individuals. Contractor shall assume all expenses associated with obtaining criminal history record information. It shall be the responsibility of the Contractor and the entities with which the Contractor contracts to ensure compliance with this provision.

§ 3.3.2.1.1 Subcontractors or any Subcontractor entity, as defined by Texas Education Code Chapter 22, shall be required by the terms of their contract with Contractor or any other contracting entity (as defined in Texas Education Code Chapter 22), and by Texas law, to obtain the required criminal history record information on their employees, agents, or applicants, to give required certifications to Owner and the contracting entities, and to obtain required certifications from the subcontracting entity's subcontractors.

§ 3.3.2.1.2 Contractor will not assign any "covered employees" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor or any Subcontractor will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 3.3.2.1.3 For the purposes of this Section 3.3.2.1, "covered employees" means employees, agents or Subcontractors of Contractor or a Subcontractor who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. "Disqualifying criminal history" means: any conviction or other criminal history information designated by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator certification under Texas Education Code Section 21.060 and 19 Texas Administrative Code § 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Texas Penal Code Title 5 Offenses Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state. Disqualifying criminal history also includes pending charges, conviction, probation, or deferred adjudication for any one of the following: (1) Any offense against a child; (2) Any sex offense; (3) Any crimes against persons involving weapons or violence; (4) Any felony offense involving controlled substances; (5) Any offenses involving the sale or distribution of controlled substances; (6) Any offenses involving dishonesty, fraud, deceit, theft, misrepresentation; (7) Two or more offenses committed within any 12-month period involving public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct; and (8) Offenses involving abuse under the Texas Family Code. Owner shall be solely responsible for making the final determination of what constitutes direct contact with Owner's students and what constitutes a disqualifying criminal history.

§ 3.3.2.2 Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's Subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying or possessing weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with Owner's students or employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students or employees. The Contractor shall further ensure that no on-site fraternization shall occur between personnel under the Contractor's and Subcontractor's direct or indirect supervision and Owner's students or employees or the

general public. Sexual harassment is strictly forbidden. Any employee of the Contractor or a Subcontractor who is found to have engaged in any such conduct shall be subject to appropriate disciplinary action by the Contractor or Subcontractor, including immediate removal from the job site.

§ 3.3.2.3 All areas of campus, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Contractor shall also require adequate and appropriate dress, including wearing shirts at all times, and "badging" of Contractor's employees, Subcontractors, and all other persons carrying out the Work on the job site for identification. Contractor shall ensure that all construction workers, whether Contractor's own forces or the forces of Contractor's Subcontractors, wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's name in a typeface large enough to be seen from a reasonable distance. Contractor shall furnish to Owner (and update, as appropriate) photo identification of all workers and employees.

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

§ 3.3.2.5 Contractor shall follow, and shall require all employees, agents and subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 3.3.2.6 Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's Subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's Subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property.

§ 3.3.2.7 Any individual found by Owner to have violated the standards of conduct or restrictions set forth in Section 3.3.2 is subject to immediate removal from the job site and, in Owner's sole discretion, permanent removal from the Project or all construction on any of Owner's property. Repeated removal of Contractor's or Contractor's Subcontractor's forces, or one serious infraction, shall constitute a material breach of the Contract justifying the immediate termination by Owner pursuant to Article 14. THE CONTRACTOR HEREBY RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FROM AND AGAINST CONTRACTOR'S AND ANY SUBCONTRACTOR'S FORCES' NON-COMPLIANCE WITH THE STANDARDS OF CONDUCT OR RESTRICTIONS SET FORTH IN SECTION 3.3.2, NON-COMPLIANCE WITH CRIMINAL LAW, AND NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. 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.

§ 3.3.3 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. Copies of inspection reports, photographs or other related records shall be made available to the Owner for review if requested. Reports and documentation shall be formatted and developed in a logical format indicating dates, time of day, findings and the person performing the inspection.

§ 3.3.4 The Contractor shall review Subcontractor 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 for the safety of their employees, persons, and property and the requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any additional

obligations that the Contractor would not have under any applicable state or federal laws, including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 3.3.5 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303, and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq. Contractor shall fully comply, and shall require any applicable Subcontractor to comply, with: (1) The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work; (2) The special shoring requirements, if any, of the Owner; and (3) Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system. Trench excavation safety protection shall be a separate pay item and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item and shall be based on the square feet of shoring used.

§ 3.3.6 The Contractor has the responsibility to ensure that all Subcontractors, Sub-subcontractors, suppliers, and their agents and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work with that of all trades, Subcontractors, and others on the Project, including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of all materials and equipment required under the Contract Documents. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which may be currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus or facility on which the Work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. When work occurs in existing facilities, Contractor understands and accepts the cost and schedule impacts associated with work in existing facilities and the potential delays and disruptions to the progress of the Work and has considered such delays and disruptions in the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other Contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take, all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

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

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§ 3.4.1.1 The Contractor and any Subcontractor or Sub-subcontractor on the Project shall properly classify, as an employee or an independent contractor, in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008, any individual the Contractor, Subcontractor, or Sub-subcontractor directly retains and compensates for services performed in connection

with the Contract. Any Contractor, Subcontractor, or Sub-subcontractor who fails to properly classify such an individual may be subject to the penalties of Texas Labor Code Sec. 214.008(c).

§ 3.4.1.2 Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor, and upon any Subcontractor and Sub-Subcontractor under the Contractor, to pay all laborers, workers, and mechanics employed or utilized by them in the execution of the Contract not less than the prevailing rates of per diem wages for work of a similar character in the locality at the time of construction.

§ 3.4.1.3 In accordance therewith Texas Government Code Section 2258 et seq.; Texas Labor Code Section 62.051 et seq, the Owner has established a scale of prevailing wages which is incorporated in the Contract Documents, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Wages listed are minimum rates only, and payment greater than the prevailing wage is not prohibited. No claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rates provided herein. If no schedule of prevailing wage rates is included in the Contract Documents, then the parties shall, at a minimum, use the wage rates determined by the U.S. Department of Labor for projects located in the County in which the Project is located in accordance with the Davis-Bacon Act, 40 USC Section 276a, which can be accessed on the internet at www.gpo.gov/davisbacon/, or the wage rates determined by any local contractor association, whichever is higher..

§ 3.4.1.4 The Contractor and each Subcontractor and Sub-Subcontractor shall keep a record showing the name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the Work and the actual per diem wages paid to each worker. 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. These records shall be maintained and made accessible for no less than three (3) years following the date of Final Completion.

§ 3.4.1.5 A Contractor or Subcontractor or Sub-Subcontractor who violates the requirements of Sections 3.4.1.2 or 3.4.1.3 shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each laborer, worker, or mechanic employed for each calendar day or part of the day that the laborer, worker, or mechanic is paid less than the wage rate stipulated in the scale of prevailing wages applicable to the Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.1.6 In the event of a complaint of a breach of the requirements in Sections 3.1.6, 3.4.4.2 or 3.4.4.3 above, the Owner shall have the right to make a determination as provided by law, and to retain any amount due under the Contract pending a final determination of the violation. Owner may conduct, at its discretion, wage-related interviews of any worker at the sites of the Work without prior warning to the Contractor or Subcontractor or Sub-Subcontractor.

§ 3.4.1.7 In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Contractor or any of its Subcontractors or Sub-subcontractors, Owner may, at its option and without any notice required by the Contract, terminate the Contract for default unless the Contractor remedies the strike of Work or Work stoppage or other disruption within twenty (20) calendar days after the dispute arises.

§ 3.4.1.8 The Contractor shall require all Subcontractors and Sub-Subcontractors to comply with the provisions of this Section 3.4.1 and its subparts.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Any such substitution request shall be made to the Architect within fifteen (15) days after execution of the Contract.

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

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the Contract Time and the construction schedule; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations and will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect and the Owner in sufficient time to allow no less than twenty-one (21) Business Days for review, unless a shorter time is agreed upon in writing. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information as stated herein.

§ 3.4.2.3 Whether or not the Owner or the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly qualified by training and experience and skilled in tasks assigned to them. The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall furnish Owner, on request, resumes of the Contractor's key personnel involved in the day-to-day Work on the Project, as well as a list of all engineers, consultants, subcontractors and suppliers involved in construction. At the written request of the Owner or Architect, the Contractor shall not use in the performance of the Work any engineer, consultant, or employee of the Contractor, Subcontractor or Sub-subcontractor reasonably deemed by Owner to be incompetent, careless, unqualified to perform the Work assigned to him, insubordinate, in violation of any provision in the Contract Documents, or otherwise unsatisfactory to Owner. Contractor shall engage sufficient workers on the Project at all times for the proper coordination and performance of the Work in the time periods required by the Contract. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

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§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that the Work will be performed and completed in a good and workmanlike manner, continuously and diligently in accordance with the Contract Documents, all applicable building codes, and generally accepted standards of engineering and construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by ~~abuse~~, by abuse by parties other than Contractor, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, ~~improper operation~~, maintenance (unless such maintenance is Contractor's responsibility), improper operation by parties other than Contractor, or normal wear and tear and normal usage. If required by the Architect, usage, but such exclusions shall only apply after Owner has taken occupancy of the portion of the Project at issue. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. Notwithstanding anything in the Contract Documents to the contrary, Owner and Contractor

expressly agree that the warranties stated herein shall mean the individual warranties associated with each particular Work or designated portion thereof within the Project, and each such individual warranty shall run from the date of Substantial Completion of the entire Work (unless otherwise expressly provided in the applicable Contract Documents for that particular Work). Contractor's warranties herein shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or designated portion thereof or, if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.1.1 In the event of failure, errors, omissions, defects, deviations, or other nonconformities of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of such Work or replacement of the nonconforming items, at no cost to the Owner. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy any defects as covered by Contractor's warranty. If Contractor does not respond to the written notice, either by beginning corrective work or notifying Owner in writing stating when corrective work will begin, within ten (10) days of Contractor's receipt of the notice or such shorter time as required in the Contract Documents, the Owner may take measures to correct the defects and Contractor will be obligated to reimburse the Owner's costs. Any measures taken by Owner to correct defects due to Contractor's failure to timely respond to Owner's written notice shall not operate to void or otherwise alter any warranties issued by, for, or through the Contractor. If notice of defects covered by warranty is given in writing to the Contractor on a timely basis, the obligation to provide the warranty work will extend beyond the applicable warranty period until the warranty defect is remedied and accepted by the Owner.

§ 3.5.1.2 Unless shorter response durations exist in the Contract Documents, the Contractor shall provide warranty repair service within 8-hours of warranty notice for the following: (1) Cooler and freezer equipment; (2) Chiller and pumps; (3) Boiler and pump; (4) Lift station; or (5) Generator.

§ 3.5.1.3 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 of a warranty claim until written acknowledgement by the Owner that the claim has been resolved.

§ 3.5.1.4 The Contractor agrees to assign to the Owner at the time of Final Completion of the Work, such assignment to be effective no later than Final Completion, any and all third-party warranties relating to materials, equipment, machinery, components, and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such third-party warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of any such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor's warranties shall in no way limit or abridge the warranties of the manufacturers and suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with Subcontractors and Sub-subcontractors and other 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.

§ 3.5.1.5 As a condition precedent to Final Payment, the Contractor shall submit to Owner as set forth below a complete set of warranties, bonds, and other guarantees on equipment, machinery, materials, components, and labor from Subcontractors, Sub-subcontractors, manufacturers, and suppliers, as appropriate, on the Subcontractor's, Sub-subcontractor's, manufacturer's, or supplier's approved forms and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents. All warranties shall include labor and materials. Contractor shall:

- (1) Obtain duplicate original warranties, executed by all applicable Subcontractors, Sub-subcontractors, suppliers, and manufacturers, and stating the warranty commencement date and duration as required by the Contract Documents;
- (2) Verify that the documents are in proper form and contain full information;
- (3) Co-sign warranties, when required;

- (4) Bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers;
- (5) Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;
- (6) Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified;
- (7) Separate each warranty with index tab sheets keyed to the Table of Contents listing; and
- (8) Deliver warranties, bonds, and other guarantees in the form described above, to the Architect who will review same prior to submission to the Owner.

§ 3.5.1.6 The Contractor shall issue in writing to the Owner as a condition precedent to Final Payment a "General Warranty" reflecting the terms and conditions of Section 3.5.1 for all Work under the Contract Documents. This General Warranty shall be assignable. Except when a longer warranty time is specifically called for in the Contract Documents or is otherwise provided by law, the General Warranty shall be for twelve (12) months from the date of Substantial Completion of the entire Work and shall be in form and content otherwise satisfactory to the Owner. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion and Final Completion and the date upon which the one-year warranty required hereunder will expire. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one month prior to the expiration of the one-year warranty period. Prior to termination of the one-year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the Work and be responsible for correcting any deficiencies not caused by the Owner or by the normal use of the Work which are observed or reported during the reinspection. (For extended warranties required by various sections (e.g., roofing, compressors, mechanical equipment), Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner.) Contractor shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one-year warranty period at least one month prior to the expiration date, Contractor's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 3.5.1.7 Contractor's express warranties and obligations herein are not exclusive of any other warranties, remedies, or guarantees Owner may have, either express or implied, under the Contract Documents, at law, or in equity, but are in addition to and not in lieu of or in limitation of any other such warranties, remedies, or guarantees.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of: (1) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or (2) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or (3) such further reasonable proof as is required by the Architect. Contractor shall also 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 61.1036(c)(3)(F).

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The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Contractor shall pay all applicable local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. Owner is an exempt entity under the tax laws of the State of Texas, and Contractor shall not include in the Contract Sum or any Modification any amount for any taxes from which the Owner is exempt by virtue of its status as a governmental entity and/or as a Texas independent school district. 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 the Limited Sale, 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. Contractor will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from its suppliers. Failure of Contractor or any Subcontractor or Sub-subcontractor to obtain Certificates of Resale from their suppliers shall make the Contractor, Subcontractor, or Sub-subcontractor responsible for absorbing the tax, without compensation from Owner. CONTRACTOR HEREBY RELEASES, INDEMNIFIES AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

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§ 3.7.1 After the Architect has filed the plans and specifications with the Texas Department of Licensing and Regulation, the Architect shall notify Contractor that Contractor may make and submit the applications for the building permit. 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. The Contractor shall procure (as required by the Contract Documents) all certificates of inspection, use, occupancy, permits and licenses, pay all charges, deposits and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection use and occupancy shall be delivered to the Architect upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum, and constitute Costs of the Work unless otherwise provided by the Contract Documents.

§ 3.7.1.1 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Contractor shall immediately inform the Architect when the Owner's participation is required, and the Architect will notify the Owner. Connections for temporary and permanent utilities, utility district/company inspections, tap charges, water meter charges, and any other similar fees assessed by jurisdictional authorities having control over the Project, as well as payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the direct responsibility of the Contractor, without reimbursement from Owner, unless otherwise agreed in writing. If the Work is new construction, then payment for temporary and permanent utility services shall be the direct responsibility of the Contractor, without reimbursement from Owner, until Substantial Completion.

§ 3.7.1.2 After consultation with the Owner, the Contractor shall obtain all permits and approvals for itself and the Owner, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Also after consultation with the Owner, the Contractor shall 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. Contractor shall coordinate processing all forms and fees with the Owner. Contractor's obligations under this Section may or may not require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction site. Any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. Reimbursable expenses shall not include any fines or penalties assessed against the Contractor, Contractor's Subcontractors or Sub-subcontractors, the Project, or the Owner.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In addition, Contractor shall authorize posting of any notices concerning the Workers Compensation insurance carried by other parties involved in the Project, including without limitation, Architect, at the same location where Contractor posts notices regarding Workers Compensation. If applicable, the Contractor shall procure and obtain all 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 from time to time for the performance of the Work.

§ 3.7.3 If the Contractor performs Work ~~knowing when Contractor knows or reasonably should have known~~ it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume ~~appropriate~~ all responsibility for such Work and shall bear the costs attributable to correction.

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If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and ~~in no event later than 14 days within~~ forty-eight (48) hours after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. ~~If either party disputes the Architect's determination or recommendation, that party~~ The Owner will then consider the facts and the reports of the Architect and the Owner will make the final determination of action. ~~If the Contractor disputes the Owner's determination, the Contractor may~~ submit a Claim 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~~ Architect in writing. 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.

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§ 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.~~ direct.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- ~~1 — allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;~~
- ~~2 — Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and~~
- ~~3 — whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. Calculation of costs or credits for allowances shall be as described in article 7.1.5.~~

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§ 3.8.4 When performing Work under allowances, Contractor shall solicit and receive not less than three written proposals, unless the requirement to obtain proposals is waived by the Owner in advance, and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the Owner.

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. In addition, the Contractor may employ a project manager and necessary assistants who may supervise several Project sites. The list of all supervisory personnel, including the project manager and superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart shall be submitted to the Owner and Architect. 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 similarly confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Questions about plan interpretation or directions shall be submitted to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion. Contractor's selection of project manager or superintendent(s) shall be approved by Owner. The Contractor shall not engage supervisory personnel or utilize an organization and chain-of-command other than as approved by Owner and Architect, and Contractor shall not replace the project manager or superintendent(s) without Owner's consent or until a replacement project manager or superintendent(s) has been selected in accordance with this Section. The Owner may reject or require removal of any job superintendent, project manager or employee of the Contractor, Subcontractor or Sub-Subcontractor involved in the Project.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to the Work, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Contractor's project manager, while not required to be present full-time at the site, shall remain assigned to the Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected in accordance with the Construction Documents.

§ 3.9.4 Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under General Conditions for such day.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, but in no event prior to the first application for payment shall submit for the Owner's and Architect's information review and approval a Contractor's construction schedule for the Work. The schedule shall be in the form of Microsoft Project, or other form designated by the Owner, and contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion and Final Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work, of the Work; (4) predecessors and successors; (5) phases; (6) baseline start and stop dates; (7) actual start and stop dates; (8) revised start and stop dates; (9) delays; (10) critical path; (11) submittals; (12) extensions of the Contract Time authorized by Change Orders, and (13) Owner activities. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project and Project and, upon such revision, shall be submitted to Architect and Owner for their review and approval. In no event will the schedule be updated less

frequently than each application for payment. The Contractor's schedule may be considered when evaluating a request for additional time.

§ 3.10.1.1 If any updated schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits, inclusive of previously accepted time extensions, set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner and Architect. Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

§ 3.10.4 The Contractor shall hold weekly progress meetings at the Project site, or at such other time and frequency as are acceptable to the Owner. Progress of the Work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required and shall take whatever corrective action is necessary to assure that the Project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date.

§ 3.10.5 If reasonably required by Owner, Contractor shall also prepare and furnish Project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule.

§ 3.10.7 The Owner's need for delivery of completed Work, or portions thereof, is largely controlled by the necessities of the school calendar and operations of school programs within the calendar year. Those needs are reflected in scheduled completion dates and milestone dates set out in the Contract Documents. The Contractor shall perform the Work in such a way as to not interfere with Owner's operations, and the importance of meeting milestones and completion dates is not exclusive.

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The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, including concealed mechanical, electrical and plumbing items inside of the facility and underground utilities at the site, and one record copy of the approved Shop Drawings, field test records, inspection certificates or records, manufacturers' certificates, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner at all times. At the completion of the Project, all such documents and records shall be delivered to the Architect, with all changes made during construction, in an editable CAD format agreed to at the beginning of the Project along with (3) full sets of hard copy drawings and one digital copy in PDF format, for submittal to the Owner upon completion of the Work as a record of the Work as constructed, and shall be signed by the Contractor certifying to Owner thereby that they show complete and "as-built" conditions, stating sizes, kinds of materials, vital piping, conduit locations, and similar matters. These documents are to be considered part of the Work beyond the General Conditions. Other than Project identification, the documents shall not bear any professional seal or information or any reference to those firms providing professional services to the Owner, except for historical or reference purposes. This shall be completed and up to date within (30) working days from Substantial Completion and shall be a condition precedent to Final Payment.

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

§ 3.11.3 In addition to any other requirement in the Contract Documents and prior to installation, at Owner's or Architect's request, Contractor shall furnish or cause a Subcontractor or Sub-subcontractor to furnish, for the Owner's and Architect's written approval, a physical sample of each specified item, product, fixture or device which is visible by the general public and/or attached to an architecturally-finished surface. Samples shall be suitably labeled, adequately protected and properly stored at the site. Samples which are approved and undamaged will be considered to be suitable for incorporation into the Work.

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

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

§ 3.12.5.1 The Contractor shall submit the number of copies of Product Data and Samples which the Contractor, Subcontractors, and Sub-subcontractor need for their use, plus two additional sets for the Architect, one additional set for the Owner, and one additional set for each of the Architect's consultants involved with the particular section of Work. Where shop drawings are involved, the Contractor shall 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 its consultants. After final review and correction of the submittal, the Contractor shall send one corrected set to the Architect and each of the Architect's consultants involved with the particular section of Work.

§ 3.12.5.2 Submittals shall be submitted at the earliest possible time in order to expedite delivery of critical or long lead time items and shall be sequenced logically in accordance with the schedule, required fabrication, and installation time. The Contractor shall submit complete Shop Drawings, Product Data and Samples to the Architect at least thirty (30) days prior to the date the Contractor needs the reviewed submittals and Samples returned, or earlier as required by the Contract Documents. For more complex systems and equipment (such as structural steel; doors, windows, and hardware; casework; mechanical, electrical, and plumbing systems and equipment; food service equipment; sound systems, and the like), the Contractor shall allow additional time for the Architect or his Consultants' review, as appropriate.

§ 3.12.5.3 The Contractor shall be prepared to submit color Samples on any key items (such as quarry tile, vinyl wall covering, etc.) within fifteen (15) days of the award of Subcontract(s). All color Samples required for the Work shall be received by the Architect no later than sixty (60) days of the date of the approval of the Contract Sum. Once samples of all key items are received, the Architect will finalize color selections.

§ 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~~ measurements, and field construction criteria related thereto, or will do so, and (3) checked and ~~coordinated~~ verified that the information contained within such submittals complies with the requirements of the Work and of the Contract Documents. If, in the opinion of the Architect or Owner, the Shop Drawings are (a) incomplete, (b) indicate an inadequate understanding of the Work covered by the Shop Drawings, or (c) indicate a lack of study and review by the Contractor prior to submittal to the Architect, the Shop Drawings will be returned, unchecked, to the Contractor for correction of these deficiencies and subsequent resubmittal. The Architect's review of Contractor's submittals shall be limited to examination of an initial submittal and one (1) re-submittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to reimbursement from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals.

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

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

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§ 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; however, the Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawings are prepared and, if required by the Architect or applicable law, by a licensed architect or engineer.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall ~~be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents.~~ The

~~Contractor shall~~ cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, ~~provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy.~~ professionals. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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§ 3.12.10.3 A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this section, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

§ 3.12.11 The Contractor shall provide composite drawings within four (4) weeks of corresponding submittals approval showing how all piping, ductwork, lights, conduit and equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturer, by Code, or in keeping with good construction practice. Space for all trade elements must be considered on the same drawing. Drawings shall be 1/4" per foot minimum scale and shall include invert elevations, elevation views and sections required to meet the intended purpose. Trades required to participate include, but are not necessarily limited to, structural, mechanical, plumbing, fire sprinkler, electrical, data and special systems.

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ § 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

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

§ 3.13.3 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 the Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area and buildings adjacent to the site or the Work. Prior to the start of any Work which may impact or otherwise affect beneficial use or occupancy of an existing facility, the Contractor shall provide a Work plan for such Work that identifies and controls any interruption for approval by the Owner. Work in this situation shall not proceed until an agreed plan of Work is approved in writing by the Owner.

§ 3.13.5 Without prior written 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 comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site.

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§ 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~~; provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. Structural members shall not be cut and air duct shapes, piping sizes and related system designed elements shall not be changed or modified except with written permission of the Architect. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.14.3 After installation of the Work, Contractor shall carefully fit around, close up, repair, patch and paint such Work to match adjoining surfaces by use of proper tools and new materials, using workers skilled in the required trades. All patching must include replacement or repair of any fire rated assembly to its full rating as required by current codes and standards at the point of Work or as may be required by the building official.

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§ 3.15.1 ~~The Contractor~~ Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall clean up by removing rubbish, including old and surplus materials, dirt, debris, or trash. At no time shall trash, dirt or other debris be allowed to remain in any wall cavity, ceiling plenum, crawl space or concealed space. 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. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. At completion of the Work, the Contractor shall remove all waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. the Project and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. 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 as a result of such activities, the Contractor or any of his Subcontractors or Sub-subcontractors shall clean and restore such surfaces to their original condition.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, ~~the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.~~ Owner, at its discretion, may perform the clean-up and withhold costs incurred from funds due to Contractor or, if the costs incurred are in excess of the funds due to the Contractor, may require the Contractor to reimburse the Owner for the costs incurred.

§ 3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall 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 Prior to Final Completion, in addition to any additional final cleaning work specified in the Contract Documents (including the Specifications), Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

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The Contractor shall provide the Owner and ~~Architect~~ Architect, and their designated representatives, with access to the Work in preparation and progress wherever located. Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

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The Contractor shall pay all royalties and license fees. ~~The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect.~~ fees with respect to the Contract or the Work. THE CONTRACTOR SHALL DEFEND SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, WAIVE AND RELEASE ANY CLAIMS AGAINST THE OWNER AND ARCHITECT WITH RESPECT THERETO, AND INDEMNIFY AND HOLD HARMLESS THE OWNER AND ARCHITECT FROM ANY LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, THAT CONTRACTOR SHALL NOT BE RESPONSIBLE TO ARCHITECT FOR DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS, OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS, OR OTHER DOCUMENTS PREPARED BY THE ARCHITECT. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless ~~the information~~ notice of such infringement is promptly furnished to the Architect. ~~Owner and Architect in writing.~~

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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, OFFICERS, AND CONSULTANTS, ARCHITECT, ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF), INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN

WHOLE OR IN PART BY THE ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY ANY ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR ANY OTHER PARTY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR, AND ANY COSTS AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE POST-JUDGMENT INTEREST RATE PROVIDED TO BE PAID UNDER THE LAWS OF THE STATE OF TEXAS.

§ 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. IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, A SUB-SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.18.3 THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION 3.18 SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM: (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 130.001 ET SEQ.

§ 3.18.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S OR SUB-SUBCONTRACTORS CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN PART BY AN ACT OR OMISSION OF OWNER OR ITS AGENTS, OFFICERS, OR EMPLOYEES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1.

§ 3.18.5 THE OWNER MAY CAUSE ANY SEPARATE CONTRACTOR WHO MAY HAVE A CONTRACT WITH THE OWNER TO PERFORM CONSTRUCTION OR INSTALLATION WORK IN THE AREAS WHERE WORK WILL BE PERFORMED UNDER THIS AGREEMENT, TO AGREE TO INDEMNIFY AND TO HOLD THE OWNER AND THE CONTRACTOR HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS IS PROVIDED IN SECTION 3.18.1 ABOVE. LIKEWISE, CONTRACTOR AGREES TO INDEMNIFY AND TO HOLD THE OWNER'S SEPARATE CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SECTION 3.18.1 ABOVE.

§ 3.18.6 THE CONTRACTOR AGREES TO WAIVE ANY AND ALL CLAIMS IT MAY HAVE AGAINST THE OWNER, CONNECTED WITH, RESULTING FROM, OR ARISING OUT OF, CLAIMS AND SUITS COVERED BY THE INDEMNIFICATION AGREEMENT CONTAINED HEREIN AND AGREES THAT ANY INSURANCE POLICY SHALL PROVIDE FOR THE WAIVER OF SUBROGATION RIGHTS AGAINST THE OWNER.

§ 3.18.7 To the extent allowed by law, the Contractor agrees to insure the indemnity and hold harmless clauses contained in this Section 3.18, including its subparts, with insurance policies, approved by the Owner, and issued by a carrier authorized to do business in the State of Texas, in the minimum amounts set out in Article 11 and/or Section 11.2 of these General Conditions.

§ 3.18.8 The provisions of Section 3.18 in its entirety, including all of its subparts, shall survive the completion, termination, or expiration of the Contract, howsoever caused, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of Final Completion nor acceptance of occupancy in whole or in part of the Work shall waive or release any of the provisions of Section 3.18 and its subparts.

§ 3.19 Antitrust Violation

To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. The Contractor shall include this provision in its agreements with each Subcontractor, Sub-subcontractor and supplier. Each Subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

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§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement-Contract Documents.

§ 4.1.2 Duties, The Owner shall notify the Contractor when 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.have been modified.

§ 4.1.3 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Contract Documents by the duties, responsibilities, or activities of the Architect.

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§ 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~~ construction, until the date the Architect issues the final Certificate for Payment-a recommendation that the Final Payment is due, and, with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.Documents or expressly authorized by the Owner in writing.

§ 4.2.2 The Architect will visit the site at Architect or its authorized representative shall visit the site at least twice per week (or more per week when deemed necessary by the Owner or when necessary to protect Owner's interests) and at other 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 to inspect the progress, quantity and quality of the Work completed, to reject any observed nonconforming Work, and to determine if the Work 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.Documents and on time. Furthermore, a minimum of two job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect and attended by the Contractor. Attendees will include the Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. The Architect, Owner and their representatives shall

at all times have access to the Work. Architect or its authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or its authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall provide notice and shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third party laboratory or testing services to assist the Architect and Owner. On the basis of the on-site observations by Architect, Architect shall keep Owner and Contractor informed of the progress and quality of the Work, through Architect's field reports, and shall guard Owner against defects and deficiencies in the Work. Architect shall promptly notify Owner and Contractor orally regarding any defect or nonconforming Work, which shall be followed by notice in writing of defects or nonconforming Work noted and corrective actions taken or recommended. The Architect, however, shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs, but this does not relieve Architect of Architect's responsibilities under the Contract. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed at no additional cost to Owner.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, Sub-subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

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The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized by the Owner or Architect, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors-Subcontractors, sub-subcontractors, and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols. Notwithstanding the foregoing, Owner reserves the right to communicate directly with the Contractor and Subcontractors.

§ 4.2.5 Based on the Architect's evaluations As further provided in the Contract Documents, based on the Architect's evaluations of the Work progress and quality of the Work and 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: amounts, which shall be further subject to the Owner's review, modification, approval, or rejection.

§ 4.2.6 The Architect has authority to shall 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 recommend to Owner additional inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. Testing or inspections required by this section shall be conducted subject to the requirements of Chapter 2269 of the Texas Government Code. 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 or the Owner to the Contractor, Subcontractors, Sub-subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work: of the Work, or constitute approval or acceptance of Work that is deficient or does not meet the requirements of the Contract Documents. 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 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. In the event of a disagreement between the Architect and Contractor, the Owner will make the final determination after reviewing all of the information.

§ 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 Contract Documents and all applicable laws, statutes, codes and requirements applicable to Architect's design services. 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 with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or Separate Contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the general accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and/or omissions discovered by the Architect in the Shop Drawings, Product Data and Samples.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with 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 by the Contractor 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 Contract Documents and do not change the Contract Sum or Contract Time, then the Architect may issue an order for a minor change in the Work with prior written notice to the Owner, 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 and, in consultation with the Owner, determine the date or dates of Substantial Completion and the date of final completion; 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. In the event Architect is required to perform more than two inspection(s) to determine the date or dates of Substantial Completion or Final Completion due to Contractor's failure to meet the conditions for such completion, Contractor shall be responsible for paying or reimbursing Owner for the cost of any Additional Services charged by Architect or Consultants under the agreement between Owner and Architect.

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§ 4.2.11 The Architect will interpret and decide make recommendations on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. Contractor, which shall be

copied to the other. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Owner will make the final determination of all matters concerning performance after consultation with the Architect.

§ 4.2.12 Interpretations ~~and decisions or recommendations~~ 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, recommendations,~~ 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.~~ Contractor.

§ 4.2.13 The Architect's Owner's decisions on matters relating to aesthetic effect ~~will be final if consistent with the intent expressed in the Contract Documents.~~ shall be final.

§ 4.2.14 ~~The Architect will review and respond to requests for information about the Contract Documents. Contractor is allowed a reasonable number of requests for information that are initiated by Contractor and if Contractor exceeds that reasonable amount, as determined by the Architect, in its sole discretion, Contractor shall pay the Architect's fee for review of any additional requests for information.~~ 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.~~ information. In the event of a disagreement between the Architect and Contractor, the Owner will make the final determination after reviewing all of the information.

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§ 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, away from the site, or otherwise to furnish labor or materials.~~ The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor. The term "Subcontractor" includes persons supplying materials or equipment for the Work.

§ 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, away from the site, or otherwise to furnish labor or materials.~~ 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. The term "Sub-subcontractor" includes persons supplying materials or equipment for the Work.

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§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. All Subcontractors shall be procured in accordance with Texas Education Code Chapter 44, Subchapter B, and Texas Government Code Chapter 2269, as applicable. If Contractor is a Construction Manager at Risk, all trade contractors and Subcontractors shall be procured in accordance with Sections 2269.255 and 2269.256 of the Texas Government Code. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its Subcontractors, and Sub-subcontractors, including those recommended or approved by the Owner.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable and timely 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, When the parties agree on a proposed substitute Subcontractor, or if the Owner requires use of a specific Subcontractor, then~~ the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, Sub-subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

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

§ 5.2.5 Contractor and each Subcontractor and Sub-subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in the Contract Sum or Contract Time shall be allowed for failure to so inspect or investigate.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, except as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each Subcontractor and Sub-subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in amount commensurate with the Work to be performed by the Subcontractor or Sub-subcontractor.

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to ensure the payment of any monies to Subcontractors or Sub-subcontractor due to any non-payment to the Contractor or non-payment of Subcontractors by the Contractor.

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

§ 5.4.1 Each subcontract agreement for a ~~any unperformed~~ portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract ~~by the Owner for cause pursuant to Section 14.2~~ either in accordance with Article 14 or abandonment of the Project by the Contractor, and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond ~~and relating to the Contract bonds relating to the Contract; and~~
- .3 the Subcontractor provides bonds as required by law of prime contractors and by Owner.

When ~~If~~ the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the ~~subcontract~~ subcontract; provided, however, that Owner does not assume Contractor's obligations or liabilities for defaults occurring prior to Owner's assumption, or for the payment to the Subcontractor or supplier for Work, if payment for such Work has previously been made to Contractor. Such liabilities or obligations shall remain with Contractor. Owner shall only be responsible for compensating Subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by Subcontractors prior to the date of Owner's written notice of acceptance.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of any of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a Subcontractor, Sub-subcontractor, or vendor may also be liable.

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

§ 5.4.4 All subcontracts shall state that they will be assignable to the Bond Trustee or his designee, if funding for the Project is obtained through bond proceeds.

§ 5.5 Notice of Subcontractor Default

Contractor shall promptly notify Owner and Architect in writing of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in 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 worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

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§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained ~~under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation for the Project.~~ The Owner further reserves the right to perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work.

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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 any Separate Contractors and the Owner in reviewing their construction schedules. Contractor shall cooperate with other Separate Contractors to ensure that the Work remains on schedule. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules agreement and submit such revisions to the Owner for the Owner's approval. The construction schedules, if approved by the Owner, shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

§ 6.2 Mutual Contractor's Responsibility

§ 6.2.1 It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's Separate Contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable site access and opportunity for introduction and storage or staging of their materials and equipment and performance of their activities, activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Contractor shall be responsible for coordination between Contractor's Subcontractors, Sub-subcontractors and Owner's Separate Contractors. Contractor shall review Owner's contract with Owner's Separate Contractors and become familiar with the requirements and scope of services contained therein.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work, and shall promptly report in writing to the Architect and Owner if Owner's Separate Contractors otherwise fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. Failure of the Contractor to notify the Architect and Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. Work and is performed in a timely manner. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not actually known to Contractor and are not reasonably apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.3.1 If the Architect is required to provide contingent additional services as provided in the Agreement between the Owner and the Architect, specifically relating to additional compensation for the Architect for evaluating an excessive number of claims submitted by the Contractor or others in connection with the Work in accordance with the Owner's Agreement with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the contingent additional services result from negligence or an omission by the Architect.

§ 6.2.3.2 If the Architect provides services in connection with a legal proceeding, except when the Architect is a party thereto, and the Owner requests the Architect in writing to provide such services, then the cost of such services shall be paid for by the party whose act or omission was a proximate cause of the problem that led to the requirement to provide such services. Such services shall be paid for by such party through the Owner, who upon receipt of same shall reimburse the Architect.

§ 6.2.3.3 All construction costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Contract Documents, will be borne by the Contractor.

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§ 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. If such Separate Contractor initiates a claim or legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at its own expense, and if any judgment or award against the Owner arises therefrom, based on Contractor's act or omissions or the act or omissions of Contractor's employees, Subcontractor, Sub-subcontractor or parties for whom Contractor has liability, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court and other costs which the Owner has incurred over and above those paid for directly by the Contractor.

§ 6.2.6 The Contractor shall be responsible for any delays to a Separate Contractor caused by the Contractor or its Subcontractors, Sub-subcontractors, or suppliers.

...

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

...

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. A properly prepared written request for a change in the Work by Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a recommendation to Owner.

§ 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~~ the approval of the Owner and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be ~~issued~~ issued, subject to the Owner's approval, by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Contractor shall not make any claim for an adjustment to the Contract Sum or Contract Time due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a Change in the Work. No claim for an adjustment to Contract Sum or Contract Time shall be valid unless so ordered or directed.

§ 7.1.4 Intentionally Deleted

§ 7.1.5 Calculation of costs or credits for Changes, minor changes, Proposals, Contingency expenditures and Allowance expenditures:

§ 7.1.5.1 When calculating the Cost of the Work for Changes, minor changes, Proposals, Contingency expenditures and Allowances, the Contractor shall furnish and include substantiation to satisfaction of the Owner of the following from Subcontractors:

Description of Subcontractor Cost of the Work Element

A Bare Material Costs

B Labor Hours

C Labor Costs (Direct only, no markup)

D Labor Cost Markup (Benefits, employer taxes)

E Equipment

F Markup on Work performed by other than Subcontractor's own forces, which shall not exceed 10%

G	Markup on Work performed by Subcontractor's own forces, which shall not exceed 10%
H	Contractor's Overhead and Profit, which shall not exceed 6.25% of A through G
I	Cost of the Work (Sum of A through H)

§ 7.1.5.2 When Contractor self performs Work, when calculating the Cost of the Work for Changes, minor changes, Proposals, Contingency expenditures and Allowances, the Contractor shall furnish and include substantiation to satisfaction of the Owner of the following:

Description of Contractor Cost of the Work Element

A	Bare Material Costs
B	Labor Hours
C	Labor Costs (Direct only, no markup)
D	Labor Cost Markup (Benefits, employer taxes)
E	Equipment
F	Contractor's Overhead and Profit, which shall not exceed 6.25% of A through E
G	Cost of the Work (Sum of A through F)

No additional Fee or General Conditions cost shall apply to self-performed Work.

§ 7.1.5.3 For Unit Prices stated in the Contract Documents or subsequently agreed upon. Additional mark-ups for overhead and profit will not be allowed in Unit Price Work.

§ 7.1.6 The Contractor, upon receipt of written notification by the Architect of a proposed item of change in the Work, shall prepare within 10 calendar days a Change Proposal in such form or forms as directed by the Architect.

- .1 Each separate Change Proposal shall be numbered consecutively and shall include all cost related to the proposed Change in the Work, including any disruption or impact on performance.
- .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 Architect and the Contractor;
- .4 A revised Change Proposal shall be the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix;
- .5 Upon written approval of a Change Proposal by Owner, the Architect and the Contractor, the Architect will prepare an Allowance Expenditure Authorization or Change Order authorizing such change in the Work; and
- .6 The Contractor shall request extensions of Contract Time due to changes in 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 Contract Time extension. Any request for extensions of Contract Time must be substantiated through the demonstration of the impact of the proposed item of change in the Work to the critical path schedule for the Project.

§ 7.1.7 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.

§ 7.1.8 In accordance with Texas Education Code §44.0411 if the Contract Sum is \$1,000,000.00 or more, or if the Contract Sum is less than \$1,000,000.00, and any Change Order, Construction Change Directives, or other Changes in the Work would increase the Contract Sum to \$1,000,000.00 or more, the total of all Change Orders, Construction Change Directives, or other Changes in the Work may not increase the Contract Sum by more than 25% of the original Contract Sum. Any Change Order, Construction Change Directive, or other Change in the Work that would exceed that limit is void and of no effect.

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§ 7.2.2 In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or be the basis of 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

prior to the commencement of such modified or changed Work. 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.

§7.2.3 Contractor stipulates that 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 and attorney's fees and costs arising from a dispute with a Subcontractor or Sub-subcontractor over the Change Order.

§ 7.2.4 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and, if required by the Owner, the 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.

...

- .2 Unit prices stated in the Contract Documents or subsequently agreed upon; upon (additional mark-ups for overhead, profit and fees will not be allowed);
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; fee, subject to the limitations of Section 7.1; or
- .4 As provided in Section 7.3.4; Section 7.3.4, subject to the limitations of Section 7.1.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following: then the adjustment shall be determined by the Architect on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. Direct costs shall be limited to the following to the extent such costs are reasonable:

- .1 ~~Costs~~ Actual costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 ~~Costs~~ Actual costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed; used in performing the change in the Work;
- .3 ~~Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~ Actual rental costs of machinery and equipment rented from third parties, 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; and
- .4 ~~Costs~~ Actual costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 ~~Costs of supervision and field office personnel directly attributable to the change; and permit fees,~~ directly related to the change.

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

...

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved regardless of the Contractor's agreement with or disagreement with the adjustment in the Contract Sum or Contract Time or the method for determining them and shall promptly 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.

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§ 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 plus the Contractor's allocated percent of profit and overhead as confirmed by the Architect.

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

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

The Architect ~~may~~ may, subject to Owner approval, order minor changes in the Work that are consistent with the ~~intent of the~~ Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract ~~Sum~~ Sum, Allowances, Contingencies, or Contract Time, the Contractor shall notify the Architect in writing and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract ~~Sum or Contract Time~~ Sum, Allowances, Contingencies, or Contract Time, and written instruction from the Architect to proceed, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Owner shall also retain authority to order such minor changes in the Work. The Contractor shall carry out such written orders promptly. 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.

...

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

§ 8.1.2 The date of commencement of the Work is the ~~date established in the Agreement~~ first business day after Contractor's receipt of the written Notice to Proceed. The Notice to Proceed shall not be issued by the Architect until the Agreement (or Amendment Number 1, if Contractor is a Construction Manager at Risk) has been signed by the Contractor, approved by Owner's Board of Trustees (unless otherwise delegated), signed by the Owner's authorized representative, and Owner and Architect have received, and approved as to form, all required payment and performance bonds and insurance, in compliance with Article 11. Issuance of the notice to proceed shall not relieve the Contractor of its responsibility to comply with Article 11.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect and approved by the Owner in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect and Owner in accordance with Section 9.10. Unless otherwise agreed in writing by the Owner, the Contractor agrees that Final Completion shall occur not more than thirty (30) calendar days after the date of Substantial Completion.

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and ~~Owner~~ Owner's approval of such insurance.

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

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion or the date of Final Completion.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an authorized employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by ~~labor disputes, fire, unusual delay in deliveries, unavoidable casualties, fire, governmental actions,~~ adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) ~~by delay authorized by the Owner pending mediation and binding dispute resolution; reasonable control~~ which do not arise through the action or inaction of Contractor or its Subcontractor, Sub-subcontractor or suppliers, could not have been reasonably anticipated, and could not have been avoided through the exercise of reasonable care or prudent construction management by the Contractor; (4) by delay authorized in writing by the Owner; or (5) by other causes that the Contractor asserts, and the Architect ~~determines, and Owner determine,~~ justify delay, then the Contract Time ~~shall~~ may be extended for such reasonable time as the Architect ~~may determine and Owner may~~ determine. The foregoing notwithstanding, the Contractor shall not be entitled to an extension of time for changes in the Work required due to Contractor fault, or which extend beyond the time extension provided in a Change Order. Nothing in this provision will limit the rights of Owner under other provisions of this Contract. Any provision of the Contract Documents to the contrary notwithstanding, it is expressly agreed that the extension of the Contract Time shall be Contractor's sole remedy for any delay unless the same shall have been caused by acts constituting interference by the Owner which materially interfere with Contractor's performance of the Work, and then only to the extent that such acts continue after Contractor's reasonable prior written notice to Owner of such interference.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. A disagreement concerning time extensions shall not relieve the Contractor from performing the Work required by the Contract Documents and shall not be cause for the Contractor to suspend Work on the Project.

§ 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.~~ The Contract does not permit the recovery of damages, including, without limitation, extended home office overhead expenses, general conditions or other consequential damages, by the Contractor for delay or disruption or for extensions of time due to bad weather or acts of God. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time. Owner's exercise of any of its rights under the Contract Documents, including without limitation, its rights under Article 7, Changes in the Work, regardless of the extent or number of such changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not, under any circumstances, be construed as interference with Contractor's performance of the Work and shall not entitle the Contractor to any additional compensation.

§ 8.3.4 In the event of inexcusable delay by Contractor, Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts or re-sequencing of the Work. All such acceleration shall be at no cost to Owner.

§ 8.3.5 In the event that Contractor does not complete the Work within the Contract Time, then in addition to any other costs and damages (liquidated or otherwise) for which Contractor is responsible, Contractor will provide, at its expense, any bonds required by governmental authorities to enable Owner to secure a Certificate of Occupancy (if required) even though there are items of Work which are incomplete.

§ 8.3.6 The Contractor's claims related to time shall be made in accordance with applicable provisions of the

§ 9.1.1 The Contract ~~Sum~~ Sum, or if the Project is a Construction Manager at Risk Project, Guaranteed Maximum Price, is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices ~~shall be equitably adjusted~~ may, by mutual written agreement, be equitably adjusted.

§ 9.1.3 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its material obligations hereunder or is otherwise in default under any of the provisions of the Contract Documents, subject to the requirements of applicable law.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. ~~Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~ **§ 9.2.1** Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a Schedule of Values to the Architect and the Owner before the first Application for Payment, or in the case of a Guaranteed Maximum Price, within 15 days after establishing the Guaranteed Maximum Price, allocating the entire Contract Sum to the various portions of the Work. The Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect and the Owner. This Schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the Schedule of Values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Schedule of Values shall be prepared in such a manner that each major item of Work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G732 and G703 shall be used.

§ 9.2.2 In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703 (or G732 and G703, as applicable), and shall include the following:

- .1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.
- .2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.
- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).
- .4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.
- .5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.
- .6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

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§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the ~~schedule of values~~, Schedule of Values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from ~~Subcontractors~~, Sub-subcontractors, and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 ~~As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.~~ Contractor agrees that, for purposes of Texas Government Code Sections 2251.021 and 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Certificate for Payment from the Architect shall be construed as receipt of an invoice by the Owner, for purposes of Texas Government Code Sections 2251.021 and 2251.042.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, ~~unless such Work has been performed by others whom the Contractor intends to pay.~~ has not been invoiced by a Subcontractor, Sub-subcontractor, or supplier, unless Contractor has self-performed the Work.

§ 9.3.1.3 Until Final Completion of the Work, the Owner shall withhold retainage as provided in the Contract Documents, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein in Section 9.4.3 or 9.5. The retainage shall be paid with the Final Payment. (Note: if more than 5% is retained, under Texas law, then the retainage must be placed in an interest-bearing account, and the contractor must be paid the interest earned on the retainage upon completion of the Work. Texas Government Code Section 2252.032).

§ 9.3.1.4 All progress payment requests shall be accompanied by (i) an itemization of all Subcontractors, Sub-subcontractors, and suppliers, the amounts due each, and the amounts to be paid out of said progress payment to each of them and (ii) by unconditional lien waivers releasing all liens and lien rights with respect to Work for which Owner has made payment under a prior progress payment request in a form reasonably satisfactory to Owner from Contractor and all its subcontractors and material suppliers with contracts in excess of \$25,000.00 (Evidence of prior progress payment shall apply to progress payments 61-days or older). When Contractor submits its request for payment of retainage, Contractor shall submit "All Bills Paid" affidavits and unconditional final lien waivers fully releasing all liens and lien rights with respect to the Work in a form reasonably satisfactory to Owner from Contractor and all its Subcontractors, Sub-subcontractors, and suppliers with contracts in excess of \$25,000.00. Applications for Payment shall be certified as correct by Contractor. Each Application for Payment shall also be accompanied by Certified Payrolls (if Davis-Bacon Act is applicable) and such other affidavits, certificates, information, data, and schedules as Owner may reasonably require. The Owner is not required to make any payment to Contractor to the extent reasonably necessary to protect Owner.

§ 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 Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time is an additional service and shall compensate Architect directly for same.

- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon compliance by the Contractor with submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and or equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 9.3.3 The Contractor warrants that title to all Work, materials, and equipment covered by an Application for Payment will irrevocably pass to the Owner no later than the time of payment. The Contractor further warrants that Owner's payment to Contractor of the invoiced cost. 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. The Contractor further warrants that, upon submittal of an Application for Payment all Work, Payment, all Work, materials, and equipment for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, Sub-subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR WORK, MATERIALS, EQUIPMENT, OR OTHER ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

§ 9.3.4 Contractor shall submit Applications for Payment in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G732 and G703, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

§ 9.3.5 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, equipment, and supplies identified in the Applications for Payment have been purchased, paid for and received; that the Subcontractors, Sub-subcontractors, and suppliers have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that Contractor 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, Sub-subcontractors, suppliers, 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 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.

§ 9.3.6 Contractor's request for payment of the retainage may be made only upon expiration of thirty (30) calendar days after Final Completion. The request shall be accompanied by the Contractor's Affidavit of Payment of Debts and

Claims or a comparable affidavit on a form acceptable to Owner. This document must be executed under oath and notarized.

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§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, ~~either (1) Payment: (1) certify, sign, and issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) certify, sign, and issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1-9.5.1; or return the Payment Application to the Contractor as provided in Section 9.3.4.~~ Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code Section 2251.042 et seq. The Owner shall have the right to reject, modify, or approve the Architect's Certificate for Payment in whole or in part, and shall have the right to make the final determination of the payment to be made to the Contractor.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, ~~based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, Owner that, the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.~~ the amounts requested in the Application for Payment have been critically evaluated and certified and are valid and correct. 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 Architect in writing to the Owner. 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-Subcontractors, Sub-subcontractors, and suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid and shall be a prerequisite to any payment being made by the Owner to the Contractor. The Certificate of Payment is not binding on the Owner, and the Owner may rely on other provisions of the Contract Documents, as well as the Architect's Certificate, and on other information known to the Owner to determine the amount to be paid to or withheld from the Contractor.

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

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- .3 failure of the Contractor to make payments properly to ~~Subcontractors-Subcontractors,~~ Sub-subcontractors, or suppliers for labor, materials or equipment;

...

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 ~~repeated failure to carry out the Work in accordance with the Contract Documents.~~ Documents;
- .8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time; or
- .9 failure to provide any submittals or documentation required under the Contract Documents in a timely manner, including a schedule of values and a construction schedule.

§ 9.5.2 ~~When either party~~ If the Contractor disputes the Architect's or Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, ~~that party~~ the Contractor may submit a Claim in accordance with Article 15.

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§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these General Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to any provision of the Contract Documents or withholding in reliance on any such Contract Document provision in good faith, or withholding, in good faith, in reliance on information that has come to the attention of the Owner that Owner reasonably believes constitutes sufficient reason to withhold payment, and no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld.

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§ 9.6.1 After the Architect has issued a Certificate for Payment, ~~the Owner shall make payment~~ Payment for undisputed amounts, the Owner shall review the Application for Payment and the Architect's Certificate and shall make payment or withhold payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. notify Contractor within 21 days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code Section 2251.042 et seq. listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 The Contractor will receive the payments made by Owner and will hold such payments in trust to be applied first to the payment of Subcontractors, Sub-subcontractors, suppliers and any other parties furnishing labor, materials, equipment or services for the Work in accordance with the provisions of their subcontracts. The Contractor shall pay each Subcontractor, Sub-subcontractor, and supplier, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor ~~Owner~~ and before using any part of the payment from the Owner for any other purpose, the amount to which such party is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work, such party's portion of the Work, and shall, if requested, provide the Owner with evidence of such payment. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. ~~manner,~~ and if the Owner so requests, shall provide to the Owner copies of such Subcontractor payments. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors, Sub-subcontractor, 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. This Section is subject to the provisions of Texas Business and Commerce Code Chapter 56.

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§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid ~~Subcontractors and suppliers~~ Subcontractors, Sub-subcontractors, and suppliers' amounts paid by the Owner to the

Contractor for subcontracted Work. ~~If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors.~~ The Owner shall have the right at all times to contact Subcontractors, Sub-subcontractors, and suppliers to ascertain whether they have been properly paid. ~~Neither Progress payments may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties. In the event Owner receives any notices of nonpayment from parties furnishing labor, materials, equipment, or services for the Work, progress payments and/or Final Payment may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties for such amounts as the Contractor agrees or the Owner determines are due. Notwithstanding any other provision in the Contract Documents, neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.~~ Subcontractor, Sub-subcontractor or supplier. Action on the part of the Owner to require Contractor to pay a Subcontractor, Sub-subcontractor, or supplier shall not impose any liability on Owner.

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§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors.~~ The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract, provide to the Owner payment and performance bonds in accordance with the terms and provisions of the Contract Documents, including Article 11 herein, and in accordance with Texas Government Code Chapter 2253. Payments received by the Contractor from the Owner for Work properly performed by Subcontractors, Sub-subcontractors, or provided by suppliers shall be held in trust by the Contractor for ~~those Subcontractors~~ the benefit of those Subcontractors, Sub-subcontractors, or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. ~~Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~

§ 9.6.8 ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.~~ Contractor shall not withhold as a retainage a greater percentage from Subcontractors or materialmen than the percentage that Owner withheld as retainage from payments to Contractor.

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. **§ 9.7.1** Pursuant to Texas Government Code Section 2251.051, if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) additional days' notice to the Owner and Architect that payment has not been made and the Contractor intends to suspend performance for nonpayment, may, subject to applicable law, stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Architect does not issue a Certificate for Payment within seven (7) days after receipt of the Contractor's Application for Payment, through no fault of the Contractor, then the Contractor shall provide written notice to the Owner, and the Owner shall have fourteen (14) Business Days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment, then the Contractor may, upon fourteen (14) additional Business Days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received.

§ 9.7.3 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, pursuant to the Contract, or the Owner incurs any costs or expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion and without waiving any other remedies, 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 to which the Owner is entitled.

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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; operation and maintenance data shall have been submitted and approved; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial demonstration and instruction of Owner's personnel in the operation of Project systems has been completed; all the required final finishes set out in the Construction Documents are in place; and all major punch-list items and a majority of minor items of a cosmetic nature have been completed and accepted by Owner. A Certificate of Occupancy shall have been issued before Substantial Completion can be achieved. The only remaining Work shall be minor in nature so that the Owner can occupy or otherwise utilize the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's (or those claiming by, through or under the Owner) normal school or other business operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work shall be completed within 30 consecutive calendar days after the date of Substantial Completion. All work that could interfere with the Owner's use following Substantial Completion shall be performed by the Contractor after hours at no additional expense to the Owner.

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

1. All fire alarm system components must be completed and demonstrated to the Owner.
2. Local fire marshal approval certificate must be delivered to the Owner.
3. All HVAC air and water balancing must be complete.
4. All Energy Management Systems must be complete and fully operational and demonstrated to the Owner.
5. All school communications equipment and telephone systems must be complete and demonstrated to the Owner.
6. All final lockset cores must be installed.
7. All room plaques and exterior signage must be complete.
8. All Owner demonstrations and training must be completed, including kitchen equipment, HVAC equipment, plumbing equipment, and electrical equipment.
9. All exterior clean-up and landscaping must be complete.
10. All final interior clean-up must be complete.
11. A final Certificate of Occupancy conforming to the requirements of the location jurisdictional authority must be signed by the Contractor and delivered to the Owner.

12. All operation and maintenance manuals must be complete and delivered to the Owner.
13. Flood elevation certificate furnished and accepted by all authorities having jurisdiction, including, but not limited to City of Galveston and/or Galveston County.

§ 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.~~ 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. The Architect and/or Owner shall have the right to add additional items to be completed or corrected to the comprehensive list submitted by the Contractor.

§ 9.8.2.1 The Contractor's project manager or superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and Owner for supplementation. Upon receipt, the Architect shall perform a spot review to determine the adequacy and completeness of the Contractor's punch list. 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 further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the Work to be done.

§ 9.8.2.2 Upon receipt of an acceptable Contractor's punch list, the Contractor's superintendent or project manager shall accompany the Architect, its Consultants and the Owner (at the Owner's discretion) during their inspections and the preparation of verbal or written additions to the Contractor's punch list. The Contractor's project manager or superintendent shall record or otherwise take notes of all supplementary items and incorporate them into the Final Punch List. A typed addition to the supplements to the punch list will be made by the Contractor. This procedure will produce a Final Punch List that has the Contractor's, Architect's, Consultants' and Owner's comments incorporated in only one list. Delay in the preparation of the Final Punch List shall not be cause for a claim for additional cost or extension of time as the Contractor's superintendent or Project Manager shall have been in attendance during the inspections of the Architect and its consultants and will have been expected to have taken appropriate notes.

§ 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, ~~then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect.~~ Architect or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Except with the consent of the Owner, the Architect shall perform no more than three (3) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. Any fee which Owner incurs for additional site visits of Architect for determination of Substantial Completion will be at the expense of Contractor. Owner will deduct the amount of Architect's compensation for re-inspection services from Final Payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will ~~prepare a prepare,~~ sign, and issue Owner's Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list. ~~Final Punch 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 thereof.~~

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

§ 9.8.5.1 After the date of Substantial Completion of the Work as evidenced by the Certificate of Substantial

Completion, the Contractor will be allowed a period of thirty (30) calendar days, unless extended by mutual agreement or provision of the Contract, within which to complete all Work and correct all deficiencies contained in the Final Punch List attached to the Certificate of Substantial Completion. Failure by 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 ten (10) additional calendar 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 thirty (30) calendar 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 re-inspection after notification by the Contractor that corrections are complete; the cost of subsequent inspections shall also be deducted from funds remaining unpaid to the Contractor.

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, at its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted. Final Completion includes submittal of all required closeout and record documents.

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§ 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, Work, provided such occupancy or use is consented to by the insurer-insurer, if such consent is necessary, 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, that the Owner accepts in writing the responsibilities for 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, resulting from such occupancy, use, or installation, and property and liability insurance. 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 of the Architect or Owner. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

§ 9.9.2 Immediately prior to such partial occupancy or use, occupancy, use, or installation, 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, upon in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. Documents, nor shall it constitute evidence of Substantial Completion or Final Completion.

§ 9.9.4 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if the Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

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§ 9.10.1 When all of the Work is finally completed, all required documentation has been submitted, and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, acceptance, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and the Contractor shall issue its final Application for Payment. Upon the Architect's agreement and approval, the Architect

will promptly prepare, sign, and issue Owner's Certificate of Final Completion and a final Certificate for Payment certifying to the Owner that on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire ~~balance~~-balance, including all retainages, found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Owner may rely on other provisions of the Contract Documents, as well as the Architect's certifications, in determining the payment to be made to Contractor. Final Payment shall be made by the Owner in accordance with Owner's regular schedule for payments. The Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine Final Completion. Any fee which Owner incurs for additional site visits of Architect for determination of Final Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for re-inspection services from final payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

§ 9.10.2 Neither ~~final payment~~ Final Payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) using AIA Document G706, 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 evidence satisfactory to Owner that insurance required by the Contract Documents to remain in force after final payment Final Payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) ~~consent of surety, if any, to final payment, using AIA Document G707, Consent of Surety, if any, to Final Payment,~~ (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) ~~if required except for amounts currently withheld by the Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A, notarized subcontractor lien releases, and other receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, the Contract or the Work, to the extent and in such form as may be designated by the Owner. If a Subcontractor Subcontractor, Sub-subcontractor, or supplier refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. In addition, the following items must be completed and received by the Owner before Final Payment will be due:~~

- .1 Written certifications required by Sections 10.5, 10.6, and 10.7
- .2 Final List of Subcontractors (AIA Document G705);
- .3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at www.tea.state.tx.us/school.finance/facilities/cert_2004.pdf;
- .4 Contractor's and other required warranties, organized as required elsewhere in the Contract Documents;
- .5 Maintenance and Instruction Manuals;
- .6 Owner's Final Completion Certificate; and
- .7 Record drawings and "as built" drawings as required elsewhere in the Contract Documents.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final Payment shall be paid by the Owner to the Contractor within thirty (30) days after Owner's Board of Trustees has voted to accept the Work and approve Final Payment, unless otherwise delegated.

§ 9.10.3 If, after Substantial Completion of the Work, ~~final completion~~ Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting ~~final completion~~, Final Completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the ~~Architect~~, Architect and, if necessary, written consent of the surety, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and ~~accepted~~-accepted, less retainage. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to

certification of such payment. Such payment shall be made under terms and conditions governing ~~final payment,~~
~~except that Final Payment,~~ and it shall not constitute a waiver of ~~Claims~~ claims by Owner. Nothing in this subsection
is intended to limit or reduce Owner's rights and remedies in the event of a Contractor default.

§ 9.10.4 The making of ~~final payment~~ shall constitute a waiver of Claims by the Owner except those arising from
.1 — ~~liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~
.2 — ~~failure of the Work to comply with the requirements of the Contract Documents;~~
.3 — ~~terms of special warranties required by the Contract Documents; or~~
.4 — ~~audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~ Final Payment
shall not constitute a waiver of any claims, rights or remedies by the Owner.

§ 9.10.5 Acceptance of ~~final payment~~ Final Payment by the Contractor, a Subcontractor, a Sub-subcontractor, or a
supplier, shall constitute a waiver of claims by that payee except those previously ~~made in writing asserted pursuant to~~
Article 15 and identified by that payee as unsettled at the time of final Application for Payment.

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The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in
connection with the performance of the Contract. § 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, and the Contractor further agrees to fully comply with
all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et
seq., and all amendments thereto. However, the Contractor's performance of its obligations under Article 10 shall not
relieve any Subcontractor, Sub-subcontractor, supplier, or any other person or entity, of their responsibilities for the
safety of persons and property and for compliance with all applicable federal, state and local laws, rules, regulations,
and ordinances, nor shall any such party be relieved from the obligation to provide for the safety of their employees,
persons and property and their requirements to maintain a work environment free of recognized hazards.

§ 10.1.2 Contractor's employees, agents, Subcontractors, Sub-subcontractors, suppliers or anyone directly or
indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service
for Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute,
or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or
unprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of
warnings on medications while performing the Work or on Owner's premises.

§ 10.1.3 Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on
Owner's premises or performing the Work. Contractor will remove any of its employees, agents, Subcontractors,
Sub-subcontractors, suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts any of
them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or
impairment involving such person, 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 any person from performing the Work any
time cause exists to suspect alcohol or drug use. In such cases, the person so removed 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 person was in compliance with this Contract. Contractor will not use any person to perform the Work who
fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

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- .1 employees on the ~~Work and other persons who may be affected thereby;~~ Work, school personnel,
students, and other persons on or off Owner's premises who may be affected thereby, including the
installation of fencing between the Work site and the occupied portion of a connecting or adjacent
educational or other facility;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site,
under care, custody, or control of the Contractor, a Subcontractor, a Sub-subcontractor, or a
Sub-subcontractor; supplier; and

- 3 other property at the site or adjacent thereto, such as other buildings and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall also do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason. Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes full possession of and occupies that portion of the Project.

§ 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. The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; hazards, promulgating safety regulations; regulations, and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of ~~explosives or other~~ hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel-personnel~~, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.2.8 The Contractor shall be responsible for taking all precautions necessary to protect the Work in place from any foreseeable weather conditions which could cause any potential damage to portions or all Work in place or to other portions of the Project. The Contractor shall be responsible for performing all repairs and/or replacement of any Work that results from foreseeable weather conditions, and shall also be responsible for all repairs and/or replacement of any other portions of the Project to the extent such repairs and/or replacement are required as a result of

Contractor's failure to properly secure the Work or otherwise take precautions with respect to the Work as required under this Section 10.2.9.

§ 10.2.9 Injury or Damage to Person or Property

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts and omissions such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. Provided, however, Contractor understands that, under Texas law, Owner has tort immunity.

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. If Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has ~~an~~ a reasonable objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume within a reasonable time to be determined upon written agreement of the Owner and Contractor. ~~By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~ The Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion to the extent of any delay directly attributable to efforts to remove or safely contain a material or substance as required hereunder.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SECTION 3.18.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~site.~~

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

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

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

§ 10.5 Materials Containing Asbestos, Lead or PCB's

§ 10.5.1 As part of submittals under the section in the Project Manual related to Contract Closeout, and prior to Final Payment and payment of retainage, the Contractor and, as applicable, each Subcontractor, Sub-subcontractor and supplier shall submit all applicable MSDS and a notarized statement on company or other official letterhead certifying to the best of their information, knowledge and belief, that no lead, asbestos, asbestos-containing (or, under reasonably foreseeable conditions, releasing) materials or PCBs 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, have been used or incorporated into the Work, and lead or lead-bearing (or, under reasonably foreseeable conditions, releasing) materials have not been incorporated into potable water systems. As used in this statement, the term "potable water systems" shall include, without limitation, those water systems for drinking fountains, all sinks, showers, bath tubs, residential and commercial kitchen equipment, ice machines, and hose bibs, as applicable to the Project. The notarized statement shall further state that, should any such materials be found in any of the Work in contravention of the notarized statement, then Contractor shall be responsible for taking all necessary corrective action to remove those materials from the Work, at no additional cost to the Owner. The notarized statement shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the Contractor or the applicable Subcontractor, Sub-subcontractor, or supplier.

§ 10.5.2 To the best knowledge of the Owner, the Architect and his consultants, no products or materials containing asbestos or polychlorinated biphenyl (PCB) or other toxic substances have been specified for this Project. In the event the Contractor, its Subcontractors, Sub-subcontractors, or suppliers become aware that any products or materials specified, ordered, scheduled for or already incorporated in the Work on this Project, contain any hazardous material, whether stated in Section 10.4.1 or not, the situation shall be reported immediately to the Owner and Architect in writing. An acceptable, equal substitute for the product or material in question shall be proposed by the Contractor, and the product or material in question, if already onsite or incorporated in the Work, shall be removed from the site immediately and returned to the supplier or manufacturer.

§ 10.5.3 Final Payment and payment of retainage shall not be made until the information and notarized statements required under Section 10.5 have been received by Owner.

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§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, its trustees, officers, employees, agents, and representatives, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the Without limiting or waiving Owner's right to earlier notice of any modification, termination, or expiration of

insurance coverages as provided in the Contract Documents, immediately upon the date the Contractor becomes aware of an impending or actual cancellation or expiration or other lapse of any insurance required by the Contract Documents, the Contractor shall provide written notice to the Owner of such impending or actual cancellation or expiration or other lapse. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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§ 12.1.1 If the Contract Documents specify, or the Architect or Owner requests, that certain Work shall not be covered until the Architect has had an opportunity to examine such Work, the Contractor shall notify the Architect in writing a minimum of 48 hours prior to covering up any such Work in progress in order for the Architect to make proper field observations of the Work in place. The Contractor shall place no concrete, fill-in ditches, or cover up walls or ceilings without first contacting the Architect as noted above and receiving approval. If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect and the Contract Documents do not specify otherwise and the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall may be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. appropriate for the actual cost to uncover and replace such Work. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, correction and replacement, shall be at the Contractor's expense.

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

§ 12.2.1.2 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

...

§ 12.2.2.1 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 entire Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such nonconforming condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct in accordance with Section 2.4 nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. 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.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

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§ 12.2.2.3 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. Section 12.2, but only as to that corrected Work.

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§ 12.2.6 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or by defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors and Sub-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, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, then an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such agreement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The agreement 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.

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~~ Final Payment has been made.

...

The Contract shall be governed by the law of the place where the Project is located, ~~excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4, laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Galveston County, or, if no county is specified, then the county in which the Owner's main administrative office is located.

...

§ 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. Except as provided in Section 13.2.2, expressly provided otherwise in the Contract Documents, neither party to the Contract shall assign the ~~Contract as a whole~~ Contract, in whole or in part, without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment. Invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

...

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

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§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public ~~authorities~~ authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and ~~approvals~~ approvals, which shall be included in the Cost of the Work. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Owner with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. ~~The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, ~~the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements then the Owner shall provide or contract 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.~~ approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, ~~including~~ including, but not limited to, those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

...

~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate ~~the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located,~~ provided by Texas Government Code Section 2251.025. Any such payment shall be deemed overdue on the thirty-first day after Owner received Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 Equal Opportunity in Employment

§ 13.6.1 The Contractor and the Contractor's Subcontractors and Sub-subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, national origin, or any other basis protected by law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors and Sub-subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, age, disability, sex, national origin, or any other basis protected by law.

§ 13.7 Records

§ 13.7.1 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

§ 13.7.2 If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.7.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.9.1.

§ 13.7.4 Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.7.5 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 Proprietary Interests and Confidential Information

§ 13.8.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.8.2 Neither Architect nor Contractor shall disclose any confidential information which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.

§ 13.8.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, certain open records laws and other disclosure requirements, including, but not limited to, the Texas Public Information Act, Texas Government Code Section 552, et seq., subpoenas, and court orders. Nothing in the Contract shall be construed as prohibiting Owner from disclosing any information related to or in connection with the Contract in accordance with such requirements, and Contractor hereby waives any claim against and releases from liability Owner, its trustees, officers, employees, agents, and attorneys with respect to any such disclosure.

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

§ 13.10 The Contractor and its employees, agents, consultants, suppliers and subcontractors shall abide by all Owner policies and procedures regarding campus access.

§ 13.11 Contractor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. Contractor hereby certifies and verifies that neither it, nor any of its affiliates, subsidiaries, or its parent company, if any (the "Contractor Companies"), boycott Israel, and Contractor agrees that it and the Contractor Companies will not boycott Israel during the term of the Contract. For purposes of the Contract, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

§ 13.12 In accordance with Texas Government Code § 2269.054, the Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization.

§ 13.13 It is expressly understood that this Contract is not written for the benefit of third parties.

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§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ninety (90) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

...

- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment ~~on a~~on undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents; or
- ~~.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2. Documents.~~

...

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, ~~the Contractor may, upon seven days' then,~~ after the applicable time period, the Contractor may, upon ten (10) business days notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work ~~executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such executed and for proven unrecoverable loss with~~ respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination.

§ 14.1.4 If the Work is stopped for a period of ~~60~~ ninety (90) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters ~~important material~~ to the progress of the Work, the Contractor may, upon ~~seven additional days' twenty (20) additional business days written~~ notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

- ~~.2~~ fails to make payment to ~~Subcontractors~~ Subcontractors, Sub-subcontractors, or suppliers in accordance with the respective agreements between the Contractor and the ~~Subcontractors~~ Subcontractors, Sub-subcontractors, or suppliers;
- ~~.3~~ repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;~~or~~
- ~~.4~~ otherwise is guilty of substantial breach of a provision of the Contract Documents;
- ~~.5~~ fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- ~~.6~~ engages in worker misconduct in violation of Article 3.3.2 or engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- ~~.7~~ fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and ~~upon certification by the Architect that sufficient cause exists to justify such action, subject to any prior rights of the surety,~~ the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts earned to the date of termination.

§ 14.2.4 If the ~~unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor exceed the unpaid balance of the Contract Sum, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.~~

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract. Accordingly, it is agreed that upon occurrence of any such event,

Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

...

§ 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-part, for such period of time as the Owner may determine.

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

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement; executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

§ 14.5 Termination by the Owner for Non-Appropriation

§ 14.5.1 If the Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, the parties agree that the Contract is a commitment of Owner's current revenue only. As such, notwithstanding any contrary provision of the Contract, any payment obligation(s) of Owner created by the Contract shall be conditioned upon the availability of funds that are duly appropriated and allocated for such purpose. If such funds are not available, as determined by Owner in its sole discretion, Owner shall have the right to terminate the Contract, without default, penalty, or further obligation or liability to Contractor, effective at the end of the period for which such funds are available. In the event this provision is exercised, Owner shall provide written notice of non-appropriation, specifying the effective date of termination, to Contractor as soon as is reasonably practicable.

§ 14.5.2 Upon receipt of notice from the Owner of such termination for non-appropriation, the Contractor shall

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

§ 14.5.3 In case of such termination for non-appropriation, to the extent that funds have been duly appropriated and allocated for such purpose and are available, the Owner shall pay the Contractor for Work properly executed and for

proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES OF CONTRACTOR

...

A Claim is a demand or assertion by ~~one of the parties~~ the Contractor seeking, as a matter of right, payment of money, ~~interpretation of the Contract terms, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.~~ Contract, the Work, or the Project. The responsibility to substantiate Claims shall rest with the ~~party making the Claim.~~ Contractor. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

§ 15.1.2 Time Limits on Litigation

The Contractor shall commence all litigation against the Owner and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement, if any, and within the period specified by applicable law, but in any case not more than 10 years after the date of Final Completion of the Work. The Contractor waives all claims not commenced in accordance with this Section 15.1.2.

§ 15.1.3.1 Claims by ~~either the Owner or Contractor~~, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by ~~notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.~~ Claims by ~~either party~~ written notice to the Owner and to the Architect. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within ~~21~~ twenty-one (21) calendar days after occurrence of the event giving rise to such Claim ~~or within 21 days after the claimant first recognizes or within twenty-one (21) calendar days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier.~~ Claims must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety-one (91) days after the occurrence of the event giving rise to such claim or within ninety-one (91) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is ~~later~~ earlier, shall be waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

§ 15.1.3.2 Claims by ~~either the Owner or Contractor~~, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the ~~other party.~~ Owner as provided herein. In such event, no decision by the ~~Initial Decision Maker~~ Architect is required.

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§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time ~~shall may~~ be adjusted in accordance with the ~~Initial Decision Maker's decision, Architect's decision pursuant to Section 15.2,~~ subject to the right of ~~either party~~ Contractor to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with ~~the decision of the Initial Decision Maker.~~ its decision pursuant to Section 15.2.

§ 15.1.5 Claims for Additional Cost or an Increase in the Contract Sum

If the Contractor wishes to make a Claim for additional cost or for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given ~~before proceeding to execute the portion of the Work that is the subject of the Claim.~~ to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if otherwise delegated and provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution or other legal remedies as provided for in the Contract Documents.

...

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, such a Claim shall be documented in accordance with Article 8 and notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of ~~cost and of the~~ probable effect of the delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and ~~had an adverse effect on the scheduled construction prevented the execution of major items of work on normal working days.~~ Adverse weather conditions means unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year.

§ 15.1.6.2.1 Weather data obtained from the National Oceanic and Atmospheric Administration (NOAA) shall form the baseline for estimating anticipated delays and project durations and determining the occurrence of unusually severe weather. Data in the table below is compiled from the number of days per month that the anticipated weather is expected to be adverse by analysis of NOAA for the Project location. NOAA Climate Normals for IAH have been used to establish the baseline of Anticipated Adverse Weather Days per month associated with the Project schedule duration. The number of Anticipated Adverse Weather Days expected for each month is as follows:

January	6 calendar days	July	6 calendar days
February	6 calendar days	August	6 calendar days
March	5 calendar days	September	6 calendar days
April	4 calendar days	October	6 calendar days
May	6 calendar days	November	6 calendar days
June	7 calendar days	December	6 calendar days

The number of Anticipated Adverse Weather Days shown in the above schedule for the first and last months of the Contract will be prorated in determining the total number of Anticipated Adverse Weather Days during the period of the Contract.

§ 15.1.6.2.2 The Anticipated Adverse Weather Days shall be submitted with the Contractor's construction schedule for documenting future weather events and is considered to be part of the Project duration forming the Contract Time. Although the contractor is required to document the occurrence and effect of adverse weather on the Work, it does not relieve the Contractor or Architect of their respective responsibilities to investigate and determine if an excusable delay has occurred. The schedule of Anticipated Adverse Weather Days included in the Contract is established in work days. Similarly, actual weather data should be collected and recorded on a work day basis. Monthly summaries should be maintained indicating actual adverse weather conditions and the impact on Work activities. To determine if any particular month experienced Adverse Weather Days, the number of actual Adverse Weather Days is compared to that as provided by the Anticipated Adverse Weather Days. If the number of actual Adverse Weather Days is greater than the Anticipated Adverse Weather Days, then the contractor has experienced unusually severe weather. THE

DETERMINATION THAT UNUSUALLY SEVERE WEATHER OCCURRED DOES NOT AUTOMATICALLY MEAN THAT THE CONTRACTOR RECEIVES A TIME EXTENSION FOR THE DIFFERENCE OF DAYS BETWEEN THE ANTICIPATED AND ACTUAL ADVERSE WEATHER DELAY DAYS. Further analysis is necessary to determine if the unusually severe weather prevented the execution of major items of Work on normal working days. The contractor's progress schedule must be evaluated to make this determination. No day will be counted as an actual Adverse Weather Day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. If it is found that unusually severe weather actually prevented the execution of major items of Work on normal working days, a Contract Modification may be issued pursuant to Gov. Code 2269. Otherwise, no additional compensation for adverse weather delays/days will be provided.

§ 15.1.6.3 Claims for increase in the Contract Time shall set forth in writing the detail noting the circumstances that form the basis for the claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work, the party responsible for the delay, whether Contractor, Owner, Adverse Weather Days, or other, and the number of days increase in the Contract Time claimed as a consequence of each such cause of delay. Requests for an extension of time pursuant to this Section 15.1.6 shall be submitted to the Architect in writing not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred and shall include documentation demonstrating the nature and duration of the delays or disruptions. Where appropriate, a revised construction schedule indicating all the activities affected by the circumstances shall be included with the documentation. No claims for damages for delay shall be made by Contractor. Any claim not submitted under the terms of this Section 15.1.6.3 shall be waived.

§ 15.1.6.4 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors, Sub-subcontractors, or suppliers or otherwise under Contractor's control. Claims for extension of time may only be considered because of Adverse Weather Days, or hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. Claims for extension of time because of hindrances or delays not the fault of either Contractor or Owner shall be considered, but only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. Unless otherwise delegated, Board approval shall be required for any extension of time. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

The Contractor and Owner waive Claims against each other waives all Claims against Owner for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- 1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- 2 — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Contract, including, but not limited to, any amount owed as compensation for the increased cost to perform the Work as a direct result of Owner-caused delays or acceleration.

§ 15.2 Initial Decision Resolution of Claims and Disputes

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days or litigation of all Claims by the Contractor arising prior to the date Final Payment is due, unless thirty (30) days have passed after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand

mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Initial Decision Maker Architect will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim. Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. Architect in making a written recommendation.

§ 15.2.4 If the Initial Decision Maker Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days (or in the case of Owner, ten (10) business days) after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker Architect when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution. Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation Alternative Dispute Resolution

§ 15.3.1 Claims, disputes, or other matters in controversy Any Claim arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution. Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, may upon mutual written agreement, after written recommendation by the Architect or thirty (30) days after submission of the Claim to the Architect, be subject to mediation at the request of either party. Owner

and Contractor expressly agree that mediation shall not be a condition precedent to the initiation of any litigation arising out of such Claim. Claims for injunctive relief shall not be subject to this Section.

§ 15.3.2 The parties shall may endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. mediation. A request for mediation shall be made in writing, delivered writing 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. Contract. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the mediation shall be conducted by the Center for Public Policy Dispute Resolution at the University of Texas School of Law.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Owner's main administrative office is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any claim not resolved in mediation shall be subject to litigation pursuant to Section 13.1.

§ 15.4 No Arbitration

Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. Nothing in the Contract shall be construed as a waiver or relinquishment of any governmental immunities or defenses on behalf of Owner, its trustees, officers, employees, or agents as a result of the execution of the Contract or performance of the functions or obligations described therein.

§ 15.6 In any adjudication under this Agreement, attorneys' fees may be awarded as provided by law.

OWNER (Signature)

Ms. Connie Morgenroth
Assistant Superintendent of Business & Operations
Galveston Independent School District
(Printed name and title)

(Date)

CONTRACTOR (Signature)

Mr. Tommy Thomas
Vice President
JR Jones Roofing
(Printed name and title)

(Date)

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Sarah W. Langlois, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:50:28 ET on 10/15/2020 under Order No. 0364279346 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

Attorney for Owner Galveston Independent School District
(Title)

10.15.2020
(Dated)