

AMENDMENTS TO THE STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR/STIPULATED SUM
AND AMENDED GENERAL CONDITIONS TO THE
CONTRACT FOR CONSTRUCTION

DATE: August 22, 2005

CONTRACT DATE: August 22, 2005

OWNER: Keller Independent School District

CONTRACTOR: Miller Sierra Contractors, Inc.

ARCHITECT: Halbach-Dietz Architects

PROJECT: Parking Lot at KISD Learning Center

WHEREAS, Keller I.S.D. (hereinafter referred to as "Owner"), and Miller Sierra Contractors, Inc. (hereinafter referred to as "Contractor") desire to enter into a contract under which Contractor will perform services relating to the construction of Parking Lot at KISD Learning Center in the Keller Independent School District on behalf of Owner;

WHEREAS, Owner and Contractor have agreed to enter into AIA Document A101-1997 as the basic form for that Contract and to use AIA Document A201-1997 as the basic form for the General Conditions of the Contract; and

WHEREAS, certain terms and conditions of the Contract and General Conditions must be modified to comply with applicable laws and policies affecting Owner and Contractor in the construction of this project, Owner and Contractor hereby agree that the following amendments to the Contract and General Conditions:

1. Paragraph 5.1.8 of the Contract shall be deleted and replaced with the following new Paragraph 5.1.8:

5.1.8 All retainage shall be deposited in an interest-bearing account and the interest earned on the retainage shall be paid to the Contractor upon completion of the Contract.

2. Paragraph 7.2 of the Contract shall be amended by inserting the following language in the blank provided under the existing Paragraph 7.2:

Interest on an overdue payment bears interest at the rate of 1% each month, pursuant to Section 2251.025, Texas Government Code.

3. Paragraph 7.3 of the Contract shall be amended by adding the following language after the identity of the Owner's representative currently stated in Paragraph 7.3:

"As provided in the Amended General Conditions Paragraph 2.1.1, the Owner's representative shall not be authorized to bind the Owner with respect to all matters requiring the Owner's approval or authorization."

4. Paragraph 8.1.3 of the Contract shall be amended by inserting the following description in the blank which follows existing Paragraph 8.1.3:

Amended General Conditions

5. Paragraph 2.1.1 of the General Conditions shall be amended by deleting the existing Paragraph 2.1.1 and replacing it with the following paragraph:

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into a Contract, to execute a change order requiring an increase in the Contract Sum, or agree to an extension to the contractual completion date.

The Board shall designate, as appropriate, an authorized representative or representatives to act on its behalf during the course of construction. In the event that emergency changes in the scope of the work are required before the Board's next regular meeting or in order to facilitate and expedite the timely completion of the work, the Board's authorized representatives may approve construction changes that do not exceed \$5,000.00 in increased costs. Any such change shall be confirmed in writing between the Construction Manager and the Board's authorized representatives and notice of such approved changes shall be given to the Board at its next regular meeting. The Board will act as soon as reasonably possible to avoid undue delays in the construction completion date.

6. Paragraph 2.1.2 of the General Conditions shall be deleted and replaced with the following paragraph:

2.1.2 It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

7. Paragraph 2.2.3 of the General Conditions shall be amended by adding the following sentences to the existing Paragraph 2.2.3:

Notwithstanding the preceding sentences and the delivery of a surveyor of the documents by the Owner, Contractor shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for any damage done to such lines, cables, pipes, and pipelines during its construction work resulting from its negligent conduct.

8. Paragraph 3.1.2 of the General Conditions shall be deleted and replaced with the following:

The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

9. Paragraph 3.3.1 of the General Conditions shall be amended by adding the following sentence to the end of the existing Paragraph:

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, Section 756.021, et. seq.

10. Paragraph 3.3.2 of the General Conditions shall be amended to add the following to the end of the existing Paragraph:

As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-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 also require adequate and appropriate dress of Contractor's employees, Subcontractors, and all other persons carrying out the Contract.

11. Article 3.4 shall be amended by adding the following clauses 3.4.1.1, 3.4.1.2, and 3.4.1.3 to the existing Paragraph:

3.4.1.1 Prevailing Wages. Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor and upon any subcontractor under him to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the Contract.

3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the project specifications, and not less than this established scale must be paid on the project. Any workers not included in the schedule

shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

3.4.1.3 A Contractor or Subcontractor who violates the provisions of Supplementary Conditions 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

12. Article 3.5 shall be amended by adding the following Subparagraphs 3.5.2, 3.5.3, 3.5.4, and 3.5.5 to the existing Paragraph:

3.5.2 Except where otherwise stipulated in the Contract Documents, the Contractor shall, as per its Contract, warranty all materials and workmanship furnished under this Contract for a period of one (1) year after the date of Substantial Completion and shall repair and make good, without expense to the Owner, any and all defects in his work which may develop within that time.

3.5.3 All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms at the time of Substantial Completion.

3.5.4 If the Project involves work on more than one building or facility, the work on each building or facility, or approved phase of each building or facility, shall have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one year warranty on each phase or building which is substantially completed will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one month prior to the expiration of the one year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one year warranty period, Contractor shall accompany Owner and Architect on reinspection of the work and be responsible for correcting any warranty items which are observed or reported during the warranty period. Contractor shall prosecute such warranty work without interruption until accepted by Owner and Architect, even though such work should extend beyond the warranty period. If Contractor fails to provide notice of the expiration of the one year 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 corrected.

3.5.5 Contractor shall certify that the project has been constructed in general accordance with the Contract Documents.

13. Paragraph 3.6.1 shall be deleted and replaced with the following paragraph:

3.6.1 This Project is eligible for exemption from the State Sales Tax on materials incorporated in the Project, provided that Contractor fulfills the requirements of State Tax Laws. For the purpose of establishing exemption, it is understood and agreed that Contractor will be required to segregate materials and labor costs at the time a Contract is awarded, and will accept an exemption certificate from Owner. The Contractor shall pay any taxes otherwise assessed because of Contractor's failure to comply with the requirements of State Law to qualify for that tax exemption.

14. Paragraph 3.7.1 shall be deleted and replaced with the following paragraphs:

3.7.1 The Contractor shall be responsible for making and submitting application for the building permit. The Owner shall pay the municipality directly for the building permit and all other development "impact" fees, if any. The Contractor shall continue to be responsible for payment of other permits, governmental fees, licenses, and inspections necessary for proper execution of the contract and which are legally required when bids are received.

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

15. Article 3.8.1 shall be amended by deleting the period at the end of the last sentence in the existing paragraph, replacing it with a comma, and adding the following language at the end: ". . . unless required to do so by the terms of the Contract Documents."

16. Article 3.11.2 shall be added:

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.

17. Paragraph 3.12.10 shall be amended by adding the following sentences to the end of the existing paragraph:

"In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that licensed design

professional to carry comprehensive general liability and errors and omissions insurance coverage in the same amounts and forms as that required of the Architect on this Project. In the event that that 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 required of the Architect on this Project."

18. Paragraph 3.16.1 shall be amended to replace the phrase "Owner and Architect" with the phrase "Owner, Architect, and their designated agents".

19. Article 3.18.1 shall be deleted and replaced with the following:

3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, OR EXPENSES ARE NOT COVERED BY INSURANCE IN ACCORDANCE WITH ARTICLE 11 OF THESE CONDITIONS, AND SUBJECT TO PARAGRAPH 13.8.3 BELOW, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND THEIR AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE (1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, THE ARCHITECT, AND THE ARCHITECT'S CONSULTANTS WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT, OR ARCHITECT'S CONSULTANTS UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER,

ARCHITECT, AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT, AND CONTRACTOR ARE ALL PARTIES.

20. Article 3.18.3 shall be added as follows:

3.18.3 The obligations of the Contractor under paragraph 3.18.1 shall not extend to the liability of the Architect, the Architect's consultants, a registered engineer, and agents and employees of any of them for damage that is caused by or results from (1) defects in plans, designs, or specifications prepared, approved, or used by the Architect or engineer or negligence of the Architect or engineer in the rendition or conduct of professional duties called for, or arising out of the Construction Documents; and (2) arises from personal injury or death, property injury, or any other expense that arises from personal injury, death, or property injury.

21. Article 4.2.13 shall be deleted and replaced with the following paragraph:

4.2.13 The Owner's decision on matters related to aesthetic effect shall be final if consistent with the intent of the Contract Documents.

22. Paragraph 4.3.10.1 shall be amended by deleting the word "use," in the first line of that subsection.

23. Paragraph 4.4.1 shall be amended by deleting the word "arbitration."

24. Paragraph 4.4.5 shall be amended by deleting the words "and arbitration.", and replacing them with ", arbitration (if mutually agreed in writing by the parties), or litigation."

25. Paragraph 4.4.6 shall be deleted.

26. Paragraph 4.4.8 shall be deleted.

27. Article 4.5 "Mediation" shall be deleted and replaced with the following Article 4.5:

4.5 MEDIATION

4.5.1 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, shall, after initial decision by the Architect or 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 be a condition precedent to the initiation of any litigation arising out of such Claims or the initiation of arbitration (if mutually agreed in writing by the parties).

4.5.2 The parties shall endeavor to resolve their Claims by mediation. Requests for mediation shall be filed in writing with the other party to the Contract. Mediation shall be conducted by any mutually agreed mediator or, if agreement cannot be reached, with the American Arbitration Association. If the mediation is conducted by the American Arbitration Association, requests for mediation shall be filed with the American Arbitration Association and shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect.

4.5.3 The parties shall share the mediator's fee equally and, if any filing fee is required with the American Arbitration Association, shall share filing fees equally. Mediation shall be held within the county where the Project is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, signed by the parties, and shall then be enforceable as provided by the laws of the State of Texas.

28. Article 4.6 "ARBITRATION" shall be deleted in its entirety and the parties expressly agree that disputes or claims arising under the Contract Documents shall not be subject to arbitration unless mutually agreed by the parties in writing.

29. Paragraph 5.5 shall be added as follows:

5.5 Contractor shall promptly notify Owner and Architect of any material defaults by any Sub-contractor. 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 Sub-contractor or other materialman or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

30. Paragraph 9.5.3 shall be added as follows:

9.5.3 Notwithstanding any provision contained within this Article, if the work has not attained Substantial Completion with the contract time, subject to extensions of time allowed under these Conditions, Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of the Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.

31. Article 9.6.2 shall be amended by adding the following sentence at the end of the existing paragraph:

"Contractor shall promptly pay subcontractors in compliance with Section 2251.022 of the Texas Government Code."

32. Article 9.6.4 shall be amended by inserting a period after the word "Subcontractor" and deleting the phrase "except as may otherwise be required by law".

33. Paragraph 9.6.7 shall be deleted.

34. Article 9.7.1 shall be amended by deleting the words "or awarded by arbitration".

35. Paragraph 9.8.5 shall be deleted and replaced with the following paragraph:

9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance, the Owner shall make payment up to the amount of retainage as adjusted for any Work that is incomplete or not in accordance with the requirements of the Contract Documents.

36. Paragraph 9.9.1 shall be amended by deleting the phrase "Clause 11.4.1.5" and inserting the phrase "Paragraph 11.5".

37. Article 9.11 shall be added to the contract as follows:

9.11 TIME FOR COMPLETION AND LIQUIDATED DAMAGES

9.11.1 Failure of the Contractor to complete the Project within the contract time will result in direct damages being sustained by the Owner. Such direct damages are, and will continue to be, impracticable and extremely difficult to determine. Should Contractor fail to achieve substantial completion of the Project within the allotted time, Contractor agrees to pay Owner, as the Owner's sole remedy for delay, the sum of \$_____ for each calendar day of delay, after any authorized time extensions, on each building included in the Project. Execution of the contract under these specifications shall constitute agreement by Owner and Contractor that the amounts stated in this paragraph are the minimum value of the costs and actual direct damages caused by failure of Contractor to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs.

38. Paragraph 10.3.3 is deleted.

39. Paragraph 10.4 is deleted in its entirety.

40. Paragraph 10.5 is deleted.

41. Article 11, INSURANCE AND BONDS, shall be deleted and replaced as follows:

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

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

.1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than the Contractor's employees;

.4 claims for damages insured by usual personal injury liability coverage;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 claims for bodily injury or property damage arising out of completed operations; and

.8 claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under paragraph 3.18 of these Amendments to the General Conditions.

11.1.2 The Owner, its officers, employees, volunteers, elected officials, and Architect shall be covered as additional insureds for liability arising out of activities performed by, for, or on behalf of, the Contractor, including general supervision of the Contractor, products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no specific limitations on the coverage afforded the Owner, its officers, employees, or volunteers. In the event that Contractor purchases Project Management Protective Liability Insurance for the Project, Contractor shall not be required to name Owner and Architect as additional insureds on such liability coverage.

11.1.3 The Contractor's insurance coverage shall be primary insurance for the Owner, its officers, employees, and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute to it.

11.1.4 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, or volunteers.

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

11.1.6 The insurance required by subparagraph 11.1.1 shall be written for not less than the limits of liability set out herein below in paragraph 11.1.6.1 The policy shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after Final Payment, unless otherwise specified in this Article.

11.1.6.1 The Contractor shall: (1) require each Subcontractor to procure and to maintain, during the life of his subcontract, insurance of the type and in at least the amounts specified below, or (2) insure the activity of his subcontractors in his own policy and the same amounts as specified below.

.1 Worker's Compensation Statutory

.2 Employer's Liability Statutory

.3 Commercial General Liability - General Liability Insurance shall be written for the interests of both Owner and Contractor and shall include premises operations, independent contractors, products and completed operations, and blanket contractual (hold harmless). Products and completed operations insurance shall be maintained for a minimum period of two (2) years after final payment and Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during this period. Property Damage Liability shall include coverage for X, C, and U hazards. Limits of coverage shall be at least:

General Aggregate \$1,000,000.00

Products/Completed Operations
Aggregate \$1,000,000.00

Personal and Advertising Injury \$1,000,000.00

Each Occurrence \$1,000,000.00

The policy shall include an endorsement providing for an “aggregate limit of insurance per project”. The endorsement shall reserve the entire aggregate required in the policy for the exclusive use of this Contract. The policy shall be written on an occurrence basis.

.4 Comprehensive Automobile Liability (includes owned, hired, and non-owned vehicles) -

Bodily Injury (per person) \$ 500,000.00

Bodily Injury (per accident) \$1,000,000.00

Property Damage \$100,000.00

.5 Excess Liability or Umbrella Coverage \$1,000,000.00

11.1.6.2 Such policies of insurance shall be written by companies authorized by the Texas State Board of Insurance to conduct business in the state and which are satisfactory to the Owner. Contractor shall not commence work under this Agreement until satisfactory evidence of such insurance as been delivered to and approved by the Owner. Evidence shall be: (1) a duly executed Owner’s Certificate of Insurance; (2) a copy of the policies; or (3) a duly executed “ACORD” Certificate of Insurance, Form 25-S with the following modifications in the “Cancellation” Section: delete (line through) the words “endeavor to”; place the number “30” in the blank; and delete (line through) the words “but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.”

11.1.6.3 All workers on the project site must be covered by the required insurance policies of the General Contractor or a Subcontractor.

11.1.6.4 All policies or certificates shall name the Owner and its officers, employees, volunteers, elected representatives, and the Architect as additional insureds on all applicable coverage. Contractor shall not be required to name the Owner and Architect as additional insureds in the event that Contractor has purchased Project Management Protective Liability insurance on the Project.

11.1.7 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates or insurance policies required by paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days’ prior written

notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after Final Payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. Certificates complying with the provisions of paragraph 11.1.6.2 above shall be acceptable to Owner to comply with this paragraph.

11.2 CONTRACTOR'S WORKERS' COMPENSATION INSURANCE

11.2.1 A copy of Contractor's Certificate of Insurance, a Certificate of Authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the Contractor's employees, or other persons providing services on a Project is required for the duration of the Project.

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

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

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

11.2.5 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all employees of the Contractor providing services on the Project for the duration of the Project.

11.2.6 The Contractor must provide a Certificate of Coverage to the Owner prior to being awarded the contract.

11.2.7 If the coverage period shown on the Contractor's current Certificate of Coverage ends during the duration of the Project, the Contractor must, prior to the end of

the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

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

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

.2 No later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

11.2.9 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

11.2.10 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provisions of coverage of any person providing services on the Project.

11.2.11 The Contractor shall post on each Project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

11.2.12 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:

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

.2 Provide to the Contractor, prior to that person beginning work on the Project, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;

.3 Provide the Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.4 Obtain from each other person with whom it contracts, and provide to the Contractor:

a. A Certificate of Coverage, prior to the other person beginning work on the Project; and

b. A new Certificate of Coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.5 Retain all required Certificates of Coverage on file for the duration of the Project and for one (1) year thereafter.

.6 Notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.7 Contractually require each person with whom it contracts to perform as required by items 1 - 7, with the Certificates of Coverage to be provided to the person from whom they are providing services.

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

11.2.14 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the Owner to declare the contract void if the Contractor does not remedy the breach within (10) days after receipts of notice of breach from the Owner.

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

11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual

sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Paragraphs 11.1.6 and 11.1.6.1.

11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Paragraph 11.1 if Project Management Protective Liability insurance complying with the terms of this section has been purchased on the Project by the Contractor.

11.4 BUILDER'S RISK INSURANCE

11.4.1 Contractor shall obtain a builder's risk "all-risk" or equivalent policy in the amount of the initial Contract Sum (or, if applicable Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by other, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Coverage shall include material stored on-site and in transit. Such insurance will be with a company or companies lawfully authorized to do business in Texas.

11.4.2 For any claim made against Contractor's Builder's Risk Insurance, the deductible shall not exceed \$2,500 for a Contract Sum of less than \$4 million. For a Contract Sum of \$4 million or more, the deductible shall not exceed \$5,000.

11.4.3 The Contractor waives all rights against (1) Owner, the Subcontractors, Sub-subcontractors, agents, and employees, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their Subcontractors, Sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this paragraph or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as a fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents, and employees of any of them by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by

endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.4.4 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers. The Contractor shall pay all Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require Subcontractors to make payment to their Sub-subcontractors in similar manner. If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor under the insurance proceeds.

11.4.5 Partial occupancy or use shall not affect the validity or coverage of property insurance

11.5 OWNER'S LIABILITY INSURANCE

11.5.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. In addition, Owner shall be responsible for purchasing and maintaining property and casualty insurance no later than the point at which Owner begins to occupy or use any completed or partially completed portions of the Work. If Owner occupies or uses any completed or partially completed portion of the Work at any stage, such occupancy or use must be consented to by the insurer and authorized by public authorities having jurisdiction over the Work.

11.6 PERFORMANCE BOND AND PAYMENT BOND

11.6.1 The Contractor shall furnish a Performance Bond in an amount equal to one hundred percent (100%) of the Contract Sum, as security for the faithful performance of the Contract and also a one hundred percent (100%) Payment Bond, as security for the payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with the Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Article 7.19-1, Texas Insurance Code.

11.6.1.1 The Contractor shall deliver the required Bonds to the Owner not later than the date of the preconstruction meeting. All Bonds will be reviewed by the Architect for compliance with the Contract Documents prior to the execution of the Contract. In the event that Architect has any questions concerning the sufficiency of the bonds, Architect shall refer the bonds to Owner or Owner's representative for decision.

11.6.1.2 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the Bonding Company shall be provided.

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

11.6.3 The Bonds shall be provided to comply with the terms and provisions of Chapter 2253 of the Texas Government Code. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be the date of execution of the Contract. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld until sufficient bonds are provided by Contractor.

42. Paragraph 12.2.2.3 shall be deleted and replaced with the following paragraph:

12.2.2.3 If Owner performs correction Work as provided in paragraph 12.2.2.1, Owner may remove nonconforming Work and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, Owner may upon ten (10) additional days written notice sell such materials and equipment at auction or at private sale, 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, the Contract sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, Contractor shall pay the difference to the Owner.

43. Article 13.1.1 shall be deleted and shall be replaced with the following language: "This Contract shall be governed by the law of the State of Texas. Venue for any legal action arising out of the Project shall be in state courts in Parker County, Texas or in federal courts in the Northern District of Texas, Fort Worth Division, as appropriate."

44. Section 13.5, "Tests and Inspections", shall be deleted and replaced with the following paragraphs:

13.5 Tests and Inspections

13.5.1 Tests, inspections, and approvals of portions of the work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities that have jurisdiction shall be made in an appropriate time. Owner shall provide or contract for, independently of Contractor, inspection services, the testing of construction materials engineering, and verification testing services necessary for acceptance of the facility by the District. Otherwise, Contractor shall make arrangements for any tests, inspections, or approvals conducted by appropriate public authorities. Contractor shall give Architect and Owner timely notice of when and where tests and inspections required by the Contract Documents are needed or are to be made.

13.5.2 If Architect, Owner, Contractor, or public authorities having jurisdiction determine that portions of the work require additional testing, inspection, or approval not included under subparagraph 13.5.1, Owner will provide or contract for the inspection services, the testing of construction materials engineering, or the verification testing services necessary. Architect, Owner, and Contractor shall cooperate for the timely scheduling of such tests and inspections.

13.5.3 If such procedures for testing, inspection, or approval under subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the work to comply with the requirements established by the Contract Documents, Contractor shall bear all costs made necessary by such failure, including those of repeated procedures.

13.5.4 Required certificates of testing, inspection, or approval shall be secured by Contractor and delivered to Owner, unless such testing or inspection services are arranged by Owner.

13.5.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the work.

45. Paragraph 13.6.1 shall be deleted and replaced by the following:

13.6.1 An overdue payment bears interest at the rate of one percent (1%) each month, or at the legal rate established by the Texas Government Code, currently in Section 2251.025. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives an invoice from Contractor.

46. Article 13.8 shall be added as follows:

13.8 If any action at law or in equity is necessary to enforce or interpret the terms of the Contract Documents, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

47. Article 13.9, EQUAL OPPORTUNITY, shall be included as follows:

13.9 EQUAL OPPORTUNITY

13.9.1 The Contractor shall maintain policies of employment as follows:

13.9.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment, or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies.

13.9.1.2 The Contractor and the Contractor's 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, color, sex, or national origin.

48. Article 13.10 shall be added as follows:

13.10 Certification of Asbestos-Free Project

13.10.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the construction company.

13.10.2 Certification shall further state that should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

13.10.3 Final Payment shall not be made until this letter of certification has been received.

49. Paragraph 14.1.1.3 shall be amended by deleting the words "or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents," and adding the following sentence at the end of the amended section: "This Section does not authorize termination by the Contractor in the event that payment has been withheld for those reasons and conditions set out in Section 9.5 of these General Conditions and Amended General Conditions."

50. Paragraph 14.1.3 shall be amended by deleting the comma after the word "machinery," replacing it with a period, and deleting the phrase ". . . including reasonable overhead, profit and damages."

51. Paragraph 14.4.3 shall be deleted in its entirety and shall be replaced with the following language:

"In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for work executed and for costs incurred prior to notice of termination. Such payment shall not exceed the initial Contract Sum in any event."

EXECUTED this _____ day of _____, 2005.

OWNER:

CONTRACTOR:

By: _____, President
Board of Trustees

Miller Sierra Contractors, Inc.
By: _____
Title: _____

ATTEST:

By: _____, Secretary
Board of Trustees