



## Agenda of Regular Meeting

### The Board of Trustees McAllen Independent School District

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|-------------------|---|
| <b>VISION</b>     | The McAllen Independent School District is a multicultural community in which students are enthusiastically and actively engaged in the learning process. Students demonstrate academic excellence in a safe, nurturing and challenging environment enhanced by technology and the contributions of the total community.  |
| <b>MISSION</b>    | The mission of the McAllen Independent School District is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community.  |
| <b>GOALS</b>      | <ol style="list-style-type: none"><li>1. Student Achievement/Student Focus</li><li>2. People Development</li><li>3. Facility Priorities</li><li>4. Financial Priorities</li></ol>   |
| <b>STRATEGIES</b> | <ol style="list-style-type: none"><li>1. Branding</li><li>2. Attract/Retain High Quality Staff</li><li>3. Engaging Learning Environment</li><li>4. Rigorous/World Class Standards to Customize for Every Learner</li><li>5. Partnerships with Business/Civic/Education/Organizations</li><li>6. Future Ready Students</li><li>7. Financial Priorities</li></ol> |

A Regular Meeting of the Board of Trustees of the McAllen Independent School District will be held Monday, February 28, 2022, beginning at 5:00 PM Texas Our Texas room/Staff Development Building, Achieve Early College High School, 1601 North 27th Street, McAllen, TX 78501.

Items listed on this agenda may be taken in an order other than as shown on this agenda. Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

At this meeting there may be discussion and action by the Board on the item(s) and subject(s) listed as follows:

1. **CALL MEETING TO ORDER**
2. **INVOCATION**
3. **PLEDGE OF ALLEGIANCE**
4. **PUBLIC COMMENT(S)**
5. **RECESS TO CLOSED SESSION: Board of Trustees may go into Closed Session pursuant to Section(s) 551.071, 551.072, and 551.074 Texas Government Code, to discuss the following:**
  - A) Human Resources Recommendation(s) for School Year 2021-2022
  - B) Human Resources Employee Resignation(s) for School Year 2021-2022
  - C) Pending and/or Potential Litigation <sup>1</sup>

- D) Possible Real Estate Acquisition
6. **RECONVENE IN OPEN SESSION**
7. **ACTION ON ITEM(S) IN CLOSED SESSION**
- A) Approval of Human Resources Recommendation(s) for School Year 2021-2022 7  
 Item Submitted: Todd Miller, Assistant Superintendent Human Resources  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- B) Human Resources Employee Resignation(s) for School Year 2021-2022 8  
 Item Submitted: Todd Miller, Assistant Superintendent Human Resources  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- C) Pending and/or Potential Litigation
- D) Possible Real Estate Acquisition
8. **SUPERINTENDENT'S REPORT(S) - Mariachi Oro Celebrates 7th State Title**  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
9. **RECOGNITION(S)**
- A) Recognition of McAllen Independent School District's Multiple awards won through United Way of South Texas 9  
 Item Submitted: Jacob Berry, Director Community Information  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- B) Recognition of Homer J. Morris Middle School 6th Grade Tackle Football League Affiliated with Pharr Parks and Recreation 10  
 Item Submitted: Brian McClenny, Director Athletic Department  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
10. **PROCLAMATION(S)**
- A) Approval of Proclamation Regarding National Cerebral Palsy Awareness Month (March 2022) 11  
 Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- B) Approval of Proclamation Regarding Educational Diagnosticians' Week (March 6-12, 2022) 13  
 Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- C) Approval of Proclamation Regarding National Youth Art Month (March 2022) 15  
 Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- D) Approval of Proclamation Regarding Social Workers Month (March 2022) 17

Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent  
Instructional Services

**Presenter:** Dr. J. A. Gonzalez, Superintendent

- E) Approval of Proclamation of National School Breakfast Week March 7-11, 2022 19

Item Submitted: Adel Felix, Interim Assistant Superintendent District  
Operations

**Presenter:** Dr. J. A. Gonzalez, Superintendent

- F) Approval of Proclamation to Designate the Month of March as Procurement Month and the Second Wednesday of March as Professional Buyers' Day 21

Item Submitted: Cynthia Medrano Richards, Assistant Superintendent  
Business Operations

**Presenter:** Dr. J. A. Gonzalez, Superintendent

11. **DONATION(S)**

12. **BOARD MEMBER(S), BOARD COMMITTEE(S) AND DISTRICT REPORT(S)**

A) Board Committee Reports

1. Instructional Services Briefing - Chair - Tony Forina
2. Human Resources Briefing - Chair - Marco Suarez
3. District Operations Briefing - Chair - Daniel Vela
4. Business Operations Briefing - Chair - Debbie Crane Aliseda
5. Board Officers Briefing - Sam Saldivar, Jr.

B) District Reports

1. Report Regarding the Option to Protest the 2021 Property Value Study (PVS) Preliminary Certification Findings by Hidalgo County Appraisal District 23

Item Submitted: Cynthia Medrano Richards, Assistant  
Superintendent Business Operations

**Presenter:** Dr. J. A. Gonzalez, Superintendent

2. Report Regarding College, Career, Counseling Department 25  
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent  
Instructional Services

**Presenter:** Dr. J. A. Gonzalez, Superintendent

3. Report Regarding Facilities, Maintenance and Operations Projects 26  
Item Submitted: Adel Felix, Interim Assistant Superintendent  
District Operations

**Presenter:** Dr. J. A. Gonzalez, Superintendent

4. Report Regarding Taxes Collected for January 2022 41  
Item Submitted: Cynthia Medrano Richards, Assistant  
Superintendent Business Operations

**Presenter:** Dr. J. A. Gonzalez, Superintendent

5. Report Regarding the Monthly Financial and Investment Report for January 2022 43

Item Submitted: Cynthia Medrano Richards, Assistant  
Superintendent Business Operations

**Presenter:** Dr. J. A. Gonzalez, Superintendent

### 13. CONSENT AGENDA ITEMS

- A) Approval of Request for Proposal No. 2021-1007 Career and Technology Materials, Supplies, Equipment, and Related Services Discount-from-List (Round 10) 70  
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- B) Approval of Request for Proposal No. 2021-1000R Library Books, eBooks, Textbooks, Audiovisual Materials, and Instructional Reading Materials Discount-from-List (Round 12) 72  
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- C) Approval of Request for Proposal No. 2021-1005 Professional Development, Site Licenses, Supplemental Materials, and Other Related Products and Services (Round 11) 74  
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- D) Approval of Competitive Sealed Proposal No. 2022-1035 Theodore Roosevelt Elementary Re-Roof 76  
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- E) Approval of Competitive Sealed Proposal No. 2022-1036 Sam Houston Elementary Re-Roof 145  
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- F) Approval of Contract No. 2022-179 Hellas Construction, Inc. through RFCQ 2022-1037 Synthetic Turf for Baseball and Softball Fields at McAllen High School, McAllen Memorial High School, and James Nikki Rowe High School 214  
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- G) Approval of Right-of-Way Dedication Deed No. 2022-154 Thigpen-Zavala Elementary School with the City of McAllen 519  
Item Submitted: Adel Felix, Interim Assistant Superintendent District Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent



- H) Approval of Request for Proposal No. 2021-1012 Trophies, T-shirt, Awards, Incentives, and Related Products and Services (Round 7) 525  
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- I) Approval of Request for Proposal No. 2021-1020 Food, Restaurants, Catering, Fundraising, Field Trips, and Rentals (Round 13) 527  
Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
14. **INSTRUCTIONAL SERVICES, INSTRUCTIONAL LEADERSHIP, HUMAN RESOURCES, DISTRICT OPERATIONS, BUSINESS OPERATIONS, AND BOARD OF TRUSTEES ITEMS**
- A) **Instructional Services Item(s)** (Dr. Rosalba De Hoyos) **Instructional Leadership Item(s)** (Bridgette Vieh)
1. Approval of 2022 Summer School Programs 529  
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- B) **Human Resources Item(s)** (Todd Miller)
1. Approval of Update to Board Policy DEC (LOCAL) - Compensation and Benefits, Leaves and Absences (Second Reading) 530  
Item Submitted: Todd Miller, Assistant Superintendent Human Resources  
**Presenter:** Dr. J. A. Gonzalez, Superintendent
- C) **District Operations Item(s)** (Adel Felix)
- D) **Business Operations Item(s)** (Cynthia Medrano Richards)
- E) **Board of Trustees Item(s)**
1. Approval of Board of Education Meeting Minutes 538
- a) Revised - Regular Board Meeting- January 24, 2022 - 5:00 P.M.
- b) Board Workshop - February 7, 2022 - 10:00 A.M.
- c) Board Workshop - February 7, 2022 - 5:30 P.M.
- d) Regular Board Meeting - February 14, 2022 - 5:00 P.M. 539
15. **SCHEDULE OF FUTURE MEETINGS**
- A) Board Workshop - March 7, 2022 5:30 P.M. Texas Our Texas Room/Staff Development Building at Achieve Early College High School
- B) Regular Board Meeting - Monday, March 21, 2022 - 5:00 P.M. - Texas Our Texas room/Staff Development Building at Achieve Early College High School
- C) Special Board Meeting - Monday, March 28, 2022 - 5:30 P.M. - Auditorium/McAllen High School, 2021 La Vista, McAllen Texas
16. **CLOSED SESSION: The Board of Trustees may reconvene in Closed Session for further discussion regarding the agenda item(s) listed.**

**17. OPEN SESSION: The Board of Trustees may reconvene into Open Session for discussion regarding the agenda item(s) listed.**

**18. ADJOURNMENT**

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*If, during the course of the meeting, discussion of any item on the agenda should be held in a closed meeting, the Board will conduct a closed meeting in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, Subchapters D and E. Before any closed meeting is convened, the presiding officer will publicly identify the section or sections of the Act authorizing the closed meeting. All final votes, actions, or decisions will be taken in open meeting.*

*The notice for this meeting was posted in compliance with the Texas Open Meeting Act on February 25, 2022 at 4:00 P.M.*

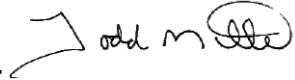
*Natalia Goza*

*on behalf of the Board of Trustees*

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** \_\_\_\_\_

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**

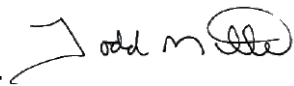


7 \_\_\_\_\_  
**Superintendent of Schools** Feb 23, 2022

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** \_\_\_\_\_

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



8 \_\_\_\_\_  
**Superintendent of Schools** Feb 23, 2022

**BOARD RECOGNITION FORM  
McALLEN INDEPENDENT SCHOOL DISTRICT**

**Meeting Date (Recommended):** February 28, 2022

**Title of Recognition:** Recognition of McAllen Independent School District's multiple awards won through United Way of South Texas

**Person(s) Being Recognized (include names & description i.e student at X High School):**  
McAllen Independent School District and staff

**Reason for Recognition:** For the fourth consecutive year, McAllen ISD earned the Golden Apple award which goes to the top five school districts based on overall pledges. McAllen ISD is the top school district this year as staff members pledged \$121,400 to United Way partners and programs.

In addition, McAllen ISD's Gonzalez Elementary took home the top honor for Highest Per Capita Campus throughout the region and McAllen ISD's Administration earned the Highest Per Capita Department throughout the region. Ann Vega, McAllen ISD's Director of Digital Learning and Library Services, earned the top honor of Campaign Coordinator of the Year.

For the first time in McAllen ISD's history, Superintendent, Dr. J.A. Gonzalez earned the South Texas Hero Award. Dr. Gonzalez was chosen because, "he exemplifies community service at the highest level and embodies the United Way Mission, to improve lives by mobilizing the caring power of our community to advance the common good."

Please note any items that will be presented: None

**Photographer Requested:** Yes

**AV needs:** None

Name of Presenter: Jacob Berry  
Phone: (956) 618-6023  
Email: jacob.berry@mcallenisd.net

**Approved for Recognition:** \_\_\_\_\_



**Superintendent**

Feb 23, 2022

**PROCEDURE FOR BOARD RECOGNITION**

1. Fill out "Board Recognition Form" in its entirety at least 12 working days before the recommended date for presentation.
2. Submit completed form to Community Information Office with a cc to immediate supervisor and the Secretary to the Board of Trustees

Following the superintendent's executive team approval, confirmation of recognitions (year-at-a-glance) will be done via e-mail each week. Honorees are instructed to report to the Community Information office at 5:15 p.m. on their designated Board Meeting date.

**BOARD RECOGNITION FORM  
McALLEN INDEPENDENT SCHOOL DISTRICT**

**Meeting Date (Recommended):** February 28, 2022

**Title of Recognition:** Recognition of Homer J. Morris Middle School 6th Grade Tackle Football Team Affiliated with Pharr Parks and Recreation Department

Person(s) Being Recognized (include names & description i.e student at X High School):

Reason for Recognition: Morris Middle School 6th Grade Tackle Football Team was Superbowl Champions of the Pharr Parks and Recreation 6th Grade Tackle Football League

Please note any items that will be presented:

**Photographer Requested:** Yes

**AV needs:**

Name of Presenter: Brian McClenny  
Phone: (956) 618-6089  
eMail: bmccleenn@mcallenisd.net

**Approved for Recognition:**   
\_\_\_\_\_  
**Superintendent**

**PROCEDURE FOR BOARD RECOGNITION**

1. Fill out "Board Recognition Form" in its entirety at least 12 working days before the recommended date for presentation.
2. Submit completed form to Community Information Office with a cc to immediate supervisor and the Secretary to the Board of Trustees

Following the superintendent's executive team approval, confirmation of recognitions (year-at-a-glance) will be done via e-mail each week. Honorees are instructed to report to the Community Information office at 5:15 p.m. on their designated Board Meeting date.

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** *Maribelle Elizondo*  
Maribelle Elizondo (Feb 23, 2022 09:45 CST)

**SUPERVISOR:** *Rosalba De Hoyos*

**Approved for presentation to the Board of Education:**

*J. Adansaby*

11 \_\_\_\_\_  
**Superintendent of Schools** Feb 23, 2022



# *Proclamation*

*State of Texas*  
*County of Hidalgo*  
*McAllen Independent School District*

*Whereas*, National Cerebral Palsy Awareness Month (March 2022)

*Whereas*, Cerebral Palsy is a neurological condition that affects muscle function and control currently worldwide, there are approximately 17 million people living with Cerebral Palsy. It is a life-long condition to which there is no cure. The Cerebral Palsy organization was formed to ensure equal rights, accessibility and opportunities for those living with Cerebral Palsy, as well as access to resources that would improve an individual's quality of life.

*Now Therefore*, I, Daniel D. Vela, Member, Board of Trustees of the McAllen Independent School District do hereby proclaim the month of March 2022 as:

***“National Cerebral Palsy Awareness Month”***

**IN WITNESS WHERE OF**, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 28<sup>th</sup> day of February 2022.

\_\_\_\_\_  
Daniel D. Vela, Member, Board of Trustees  
McAllen Independent School District

*Attest:*

\_\_\_\_\_  
Debbie Crane Aliseda, Secretary, Board of Trustees  
McAllen Independent School District



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** *Maribelle Elizondo*  
Maribelle Elizondo (Feb 23, 2022 09:45 CST)

**SUPERVISOR:** *Rosalba De Hoyos*

**Approved for presentation to the Board of Education:**

*J. Adansalby*

13 \_\_\_\_\_  
**Superintendent of Schools** Feb 23, 2022



# *Proclamation*

*State of Texas  
County of Hidalgo  
McAllen Independent School District*

*Whereas*, a successful and comprehensive education is the key to young Texans’ futures. For some children, the process runs smoothly. For many others, however, additional or specialized instruction is necessary for maximum success. When this happens, educational diagnosticians play a vital role, and

*Whereas*, through specialized training, educational diagnosticians use academic and psychological tests to isolate factors that could enhance students’ performance in the classroom. By developing and recommending teaching strategies, methods and materials, these professionals provide knowledge and skills fundamental for lifelong success,

*Therefore*, I, Tony Forina, Vice-President, Board of Trustees of the McAllen Independent School District, do hereby proclaim that the week of March 6-12, 2022 be observed as

## *“Educational Diagnosticians’ Week*

At this time, I urge all residents to recognize the important efforts of educational diagnosticians. Their hard work contributes to the success of our students and to the future of McAllen ISD.

*IN WITNESS WHEREOF*, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 28<sup>th</sup> day of February 2022.

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Tony Forina, Vice-President, Board of Trustees  
McAllen Independent School District

*Attest:*

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Debbie Crane Aliseda, Secretary, Board of Trustees  
McAllen Independent School District

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:**  Debra Loy (Feb 23, 2022 13:48 CST)

**SUPERVISOR:** *Rosalba De Hoyos*

**Approved for presentation to the Board of Education:**



15 \_\_\_\_\_  
**Superintendent of Schools** Feb 23, 2022



# Proclamation

*State of Texas*  
*County of Hidalgo*  
*McAllen Independent School District*



*Whereas*, the study of art leads to a fuller, more meaningful life; and art education provides substantial educational benefits to all elementary, middle and secondary students; and

*Whereas*, art education develops students' creative potential and improves problem-solving and critical thinking skills by reinforcing and bringing to life what students learn in other subjects; and advances student mastery in art production, art history, art criticism and aesthetics; and

*Whereas*, our national leaders have acknowledged the necessity of including art experiences in all students' education, McAllen Independent School District, strives to improve the well-being of our community by upgrading visual awareness in supporting the youth of our community in their intellectual development through artistic endeavors, and offering support to our committed art teachers

*Now Therefore*, I, Tony Forina, Vice-President, Board of Trustees of the McAllen Independent School District, do hereby proclaim that the month of March 2022 be observed as

## *“National Youth Art Month”*

All citizens are urged to take interest in and give full support to quality school art programs for children and youth.

*IN WITNESS WHEREOF*, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 28<sup>th</sup> day of February 2022.

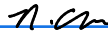
\_\_\_\_\_  
Tony Forina, Vice-President, Board of Trustees  
McAllen Independent School District

*Attest:*

\_\_\_\_\_  
Debbie Crane Aliseda, Secretary, Board of Trustees  
McAllen Independent School District

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:**   
Norma Cabrera (Feb 22, 2022 15:34 CST)

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



**17** Superintendent of Schools Feb 22, 2022



# *Proclamation*

*State of Texas*  
*County of Hidalgo*  
*McAllen Independent School District*

*Whereas*, the Social Work Professionals who aim to enhance overall well-being and help meet basic needs of communities and people;

*Whereas*, Social Workers evaluate and empower people, giving them the ability to solve problems, cope with personal roadblocks and get the resources they need to succeed;

*Whereas*, McAllen ISD Social Workers assist our students with mental health concerns, behavioral concerns, positive behavior support, and academic guidance through group and individual counseling.

*Now Therefore*, I, Debbie Crane Aliseda, Secretary, Board of Trustees, McAllen Independent School District, do hereby proclaim that the month of March 2022 be observed as

## *“Social Workers Month”*

*IN WITNESS WHERE OF*, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 28<sup>th</sup> day of February, 2022.

\_\_\_\_\_  
Debbie Crane Aliseda, Secretary, Board of Trustees  
McAllen Independent School District

*Attest:*

\_\_\_\_\_  
Sam Saldivar Jr., President, Board of Trustees  
McAllen Independent School District

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** *Alexandra Molina*

**SUPERVISOR:** *Adelino*

**Approved for presentation to the Board of Education:**

*J. X. O'Sullivan*

**19** \_\_\_\_\_  
**Superintendent of Schools**



# *Proclamation*

*State of Texas*  
*County of Hidalgo*  
*McAllen Independent School District*

*Whereas*, The National School Breakfast Program has served our nation since it was permanently established in 1975; and enables more than an average 16000 McAllen ISD students daily to have access to delicious, nutritious, and safe meals at school;

*Whereas*, evidence demonstrates that breakfast consumption is positively correlated with classroom attentiveness and better learning outcomes;

*Whereas*, district data reflects historically 80% of students in attendance consume a nutritious delicious breakfast at no charge daily through multiple distribution methods;

*Whereas*, we recognize the talent and dedication of all the food service professionals, educators, program administrators, and parents who help ensure that our students have the healthy food necessary to grow and succeed;

*Now Therefore*, I, Conrado Alvarado, Trustee, Board of Trustees of the McAllen Independent School District, do hereby proclaim the day of March 7-11, 2022 as

## *“National School Breakfast Week”*

I call upon all residents to join the dedicated individuals who administer the National School Breakfast Program in appropriate activities that support the health and well-being of our children and to become aware of their own nutrition habits, in hope of achieving a more healthful citizenry for today and the future.

*IN WITNESS WHEREOF*, I have hereunto set my hand and caused the seal of the McAllen Independent School District to be affixed on this 28<sup>th</sup> day of February 2022.

\_\_\_\_\_  
Conrado Alvarado, Trustee, Board of Trustees,  
McAllen Independent School District

*Attest:*

\_\_\_\_\_  
Debbie Crane Aliseda, Secretary, Board of Trustees  
McAllen Independent School District



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

*Alexandra Borsaglia*  
**SUBMITTED BY:** \_\_\_\_\_

*Cynthia Medrano-Richards*  
**SUPERVISOR:** \_\_\_\_\_

**Approved for presentation to the Board of Education:**

*J. Alexander*

21 \_\_\_\_\_  
**Superintendent of Schools**



# *Proclamation*

*State of Texas  
County of Hidalgo  
McAllen Independent School District*

**WHEREAS**, *the Purchasing Services team plays a significant role in the efficiency and effectiveness of the District; and*

**WHEREAS**, *in addition to the purchase of goods and services, the Purchasing Services team adds value to the District by performing such functions as executing, implementing and administering contracts, developing strategic procurement strategies, and cultivating working relationships with suppliers and other departments within the District; and*

**WHEREAS**, *the Purchasing Services team is committed to providing high-caliber strategic, logistical, and operational support of all departments within the District; and*

**WHEREAS**, *the Purchasing Services team recognizes, supports, and practices the Public Procurement Values and Guiding Principles of Accountability, Ethics, Impartiality, Professionalism, Service, and Transparency, established by NIGP – The Institute for Public Procurement (NIGP) as fundamental tenets of the public procurement profession; and*

**WHEREAS**, *NIGP has proclaimed the month of March as Procurement Month to further expand the awareness of the procurement professional’s role to governmental officials, the general public, and business leaders;*

**NOW, THEREFORE**, *I, Sofia M. Pena, Member, Board of Trustee of the McAllen Independent School District, do hereby proclaim the month of March as*

## **PROCUREMENT MONTH**

*and the Second Wednesday of March as*

## **PROFESSIONAL BUYERS’ DAY**

*In McAllen Independent School District and urge all citizens to join the District in recognizing the role of the purchasing profession within business, industry, and government.*

**IN WITNESS WHEREOF**, *I have hereunto set my hand and caused the Seal of the McAllen Independent School District to be affixed this 28<sup>th</sup> day of February, 2022.*

\_\_\_\_\_  
Sofia M. Pena, Member, Board of Trustees  
McAllen Independent School District

*Attest:*

\_\_\_\_\_  
Debbie Crane Aliseda, Secretary, Board of Trustees  
McAllen Independent School District

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



**23** \_\_\_\_\_  
**Superintendent of Schools**

**From:** PTAD Open Records <[PTADOpenRecords@cpa.texas.gov](mailto:PTADOpenRecords@cpa.texas.gov)>  
**Sent:** Monday, January 31, 2022 1:32 PM  
**To:** PTAD Open Records <[PTADOpenRecords@cpa.texas.gov](mailto:PTADOpenRecords@cpa.texas.gov)>  
**Subject:** [EXTERNAL] 2021 PVS Preliminary Certification Findings - Superintendent Notification

Dear Superintendent:

Your school district has invalid preliminary findings in the Comptroller's 2021 School District Property Value Study (PVS) which may impact the school district's state funding. You have the option to protest these findings even if the school district is eligible for the grace period. For more information on how to protest see *The Property Value Study and How to Protest* manual.

If the school district decides to protest the preliminary findings pursuant to Comptroller Rules 9.4301 through 9.4317, you may authorize an agent to assist with the protest. You or the school district's authorized agent may want to review the data related to the preliminary findings. Our office has a process—the Data Release for School District PVS Preliminary Findings (Data Release)—by which commonly requested PVS information is provided to a school district or a school district's agent authorized to engage in or assist in the preparation of a protest. The Data Release is considered to be part of protest prehearing exchanges under Comptroller Rule 9.4311.

To request the data release, school superintendents or their authorized agents must submit the [Data Release Request for School District Property Value Study Preliminary Findings - Invalid Findings](#) (PDF) form. The information included in the data release is listed under the Important Information section of the request form. To request the data release for multiple school districts, agents must submit the [Data Release School District Listing Template](#) (XLSX) along with a single request form.

Email the completed Data Release Request Form to [ptad.open.records@cpa.texas.gov](mailto:ptad.open.records@cpa.texas.gov). Within 10 business days of the request, you will receive an email notification of access to the Data Release or a notice stating the date, within a reasonable time, by which the information will be made available.

The Data Release is accessible by a secure file transfer process (FTP). We will use the Comptroller's secure ad hoc transfer process to transfer the information via an email with a link to a secure FTP site from which the authorized recipient may access and download the files. The files will only be available on the FTP site for **seven (7) calendar days**. We recommend authorized recipients copy the files to their computer during that time. After seven days, the information will no longer be available on the FTP site and you will need to contact PTAD at [ptad.open.records@cpa.texas.gov](mailto:ptad.open.records@cpa.texas.gov) for a new link.


If you are interested in obtaining additional PVS documentation or data, you may email a request specifying the additional documentation you seek to [ptad.open.records@cpa.texas.gov](mailto:ptad.open.records@cpa.texas.gov).

Sincerely,

Shannon Murphy  
Director  
Property Tax Assistance Division  
Texas Comptroller of Public Accounts

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:**   
Norma Cabrera (Feb 22, 2022 15:35 CST)

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



25  
**Superintendent of Schools** Feb 22, 2022

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBJECT:** Report Regarding Facilities, Maintenance & Operations Monthly Projects

**REFERENCE:** Goal 3: Facilities Priorities; Strategy 3: Engaging Learning Environment

**BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:**

A monthly report from Facilities, Maintenance & Operations Department about various projects throughout the District is presented every month.

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:** Topics highlighted this month include:

**Ongoing Projects: High Schools**

Culinary Arts Lab Renovation at AECHS  
Memorial HS Roof Replacement  
Restroom Partitions Replacement @ Memorial HS  
Portable Building Remodel: Rowe HS Baseball  
Rowe HS Softball, McAllen HS Softball, Memorial HS  
Baseball, Memorial HS Softball

**Completed Projects: High Schools**

Athletic Area Water Bottle Filling Station Installation @  
Rowe HS, Memorial HS, and McAllen HS  
Restroom Partitions Replacement @ McAllen HS

**Upcoming Projects: High Schools**

HVAC upgrades @ Memorial HS, Rowe HS and Lamar  
Academy  
Black Box Theaters/Mariachi Center @ Memorial HS,  
McAllen HS, Rowe HS  
Cafeteria Expansion and or Modifications @ McAllen HS  
and Lamar Academy  
McAllen High School Football Practice Field New Synthetic Turf  
and Track Installation  
Baseball and Softball Fields New Synthetic Turf Installation @  
Rowe HS, Memorial HS and McAllen HS

**Ongoing Projects: Middle Schools**

Fire Alarm Upgrades @ Travis MS, and Cathey MS  
Portable Building Weight Rooms Remodel @ Morris MS,  
Travis MS, De Leon MS. and Cathey MS

**Completed Projects: Middle Schools**

Athletic Area Water Bottle Filling Station Installation @  
Travis MS, Brown MS, De Leon MS, Morris MS, Cathey  
MS

**Upcoming Projects: Middle School**

De Leon MS HVAC Upgrade  
Travis MS HVAC and Roof Upgrade  
Cafeteria Expansion and or Modifications @ Brown MS  
De Leon MS, and Travis MS  
Surveillance Camera Upgrades @ De Leon MS, and  
Morris MS  
Chiller Replacements @ Fossum MS, and Morris MS

**Completed Projects: Elementary Schools**

Intercom Replacement @ Garza ES, Gonzalez ES, and  
Fields ES  
Pavilion Lighting Upgrades @ Houston ES, McAuliffe ES,  
Alvarez ES, Wilson ES, Roosevelt ES, Thigpen Zavala ES,  
Escandon ES, Jackson ES  
Pavilion Paint @ Alvarez ES, Wilson ES, Roosevelt ES

**Ongoing Projects: Elementary Schools**

Pavilion Paint @ Houston ES, McAuliffe ES, Seguin ES,  
Jackson ES, Thigpen Zavala ES, Escandon ES  
Pavilion Lighting Upgrade @ Seguin ES  
Houston ES Playscape CDBG  
Chiller Replacements @ Milam ES, Escandon ES, Fields ES  
Gonzalez ES, Jackson ES, Wilson ES, Perez ES, Thigpen  
Zavala ES, Castaneda ES, Hendricks ES, Garza ES,  
McAuliffe ES, Seguin ES, Sanchez ES  
Roof Upgrade @ Roosevelt ES, Houston ES  
Cafeteria Expansion and or Modifications @ Jackson ES,  
Escandon ES, Garza ES, Roosevelt ES, Milam ES,  
McAuliffe ES, Wilson ES, Seguin ES, Rayburn ES  
Gonzalez ES

**Ongoing Projects: District Wide**

Crockett Fire Alarm Project  
Staff Development Portable Remodel  
Assessment Office Remodel  
Navarro Pavilion Paint and Lighting Upgrade  
Crockett Pavilion Paint and Lighting Upgrade  
Crockett Roof Replacement  
McAllen Veterans Memorial Stadium Press Box  
Navarro Chiller Replacement  
Technology Center @ A.E.C.H.S. Campus  
Network Operations Center

**Workorders Submitted/Completed:**

January 2022 967 / 617

**LEGAL REVIEW:**

None required.

**BUDGETARY CONSIDERATIONS:**

None required.

**RECOMMENDED BOARD ACTION:**

The Report Regarding Facilities, Maintenance & Operations is submitted for information purposes only.

**SUBMITTED BY:** 

**SUPERVISOR:** 

For further information contact:

Name: Ruben Trevino

Office: (956) 632-3200

eMail: ruben.trevino@mcallensd.net

**Approved for presentation to the Board of Education:**



26

**Superintendent of Schools**

# Report Regarding



# Facilities Maintenance & Operations Projects



27

**February 28, 2022**



# Report Regarding Facilities Maintenance & Operations Projects Ongoing Projects: High Schools

**Culinary Arts Lab Renovation at A.E.C.H.S.**

**Memorial HS Roof Replacement**

**Restroom Partitions Replacement @  
Memorial HS**

**Portable Building Remodel @**

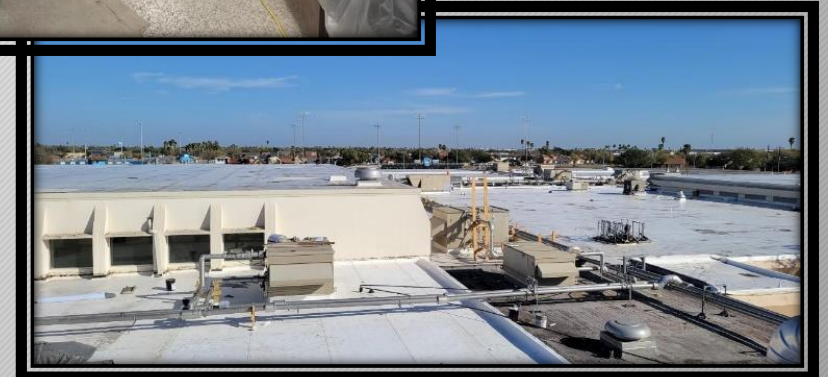
**Rowe HS Baseball**

**Rowe HS Softball**

**McAllen HS Softball**

**Memorial HS Baseball**

**Memorial HS Softball**





# Report Regarding Facilities Maintenance & Operations Projects Completed Projects: High Schools

## Athletic Area Water Bottle Filling Station Installation @

**Rowe HS**

**Memorial HS**

**McAllen HS**

## Restroom Partitions Replacement @

**McAllen HS**



# **Report Regarding Facilities Maintenance & Operations Projects Upcoming Projects: High Schools**

## **HVAC Upgrades @**

**Memorial HS  
Rowe HS  
Lamar Academy**

## **Black Box Theaters/Mariachi Center @**

**Memorial HS  
McAllen HS  
Rowe HS**

## **Cafeteria Expansion and or Modifications @**

**McAllen HS  
Lamar Academy**

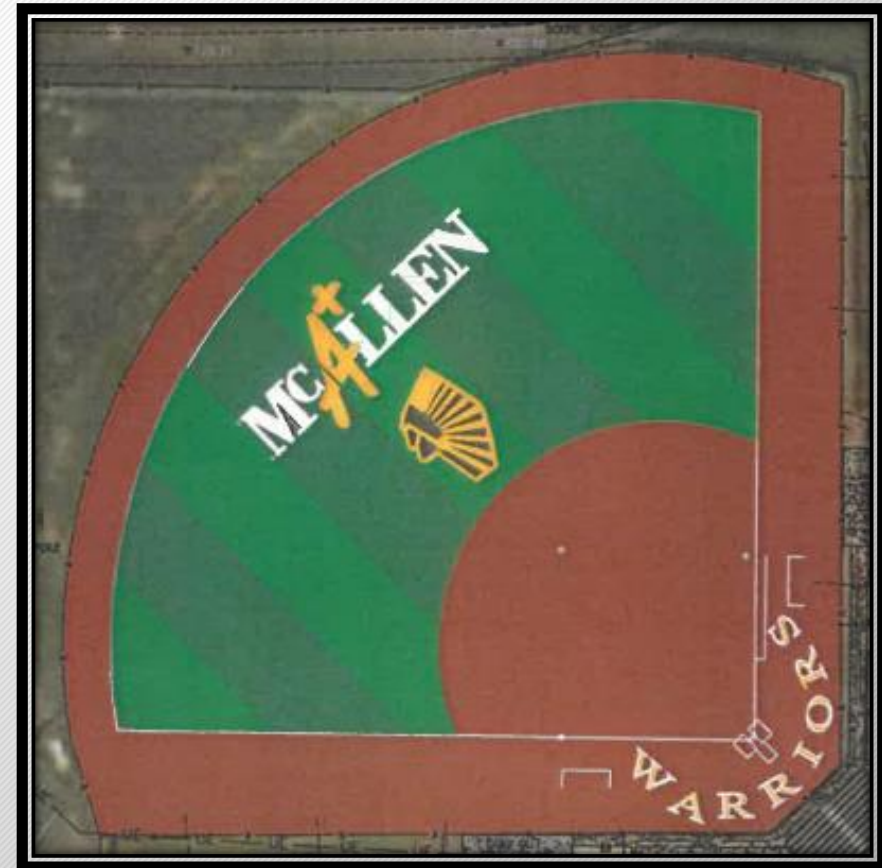
## **McAllen High School Football Practice Field New Synthetic Turf and Track Installation**

## **Baseball and Softball Fields New Synthetic Turf Installation @**

**Rowe HS  
Memorial HS  
McAllen HS**

# Report Regarding Facilities Maintenance & Operations Projects Upcoming Projects: High Schools

## Baseball and Softball Fields New Synthetic Turf Installation





**Report Regarding  
Facilities Maintenance & Operations Projects  
Ongoing Projects: Middle Schools**



**Fire Alarm Upgrades @**

**Travis MS  
Cathey MS**

**Portable Building Weight  
Rooms Remodel @**

**Morris MS  
Travis MS  
De Leon MS  
Cathey MS**

**Report Regarding  
Facilities Maintenance & Operations Projects  
Completed Projects: Middle Schools**



**Athletic Area Water Bottle Filling Station Installation @**

**Travis MS**

**Morris MS**

**Brown MS**

**Cathey MS**

**De Leon MS**

# **Report Regarding Facilities Maintenance & Operations Projects Upcoming Projects: Middle Schools**

**De Leon MS HVAC Upgrade**

**Travis MS HVAC and Roof Upgrade**

**Cafeteria Expansion and or Modifications @**

**Brown MS**

**De Leon MS**

**Travis MS**

**Surveillance Camera Upgrades @**

**De Leon MS**

**Morris MS**

**Chiller Replacements @**

**Fossum MS**

**Morris MS**



# Report Regarding Facilities Maintenance & Operations Projects Ongoing Projects: Elementary Schools

## Pavilion Paint @

**Houston ES**

**Seguin ES**

**Thigpen Zavala ES**

**McAuliffe ES**

**Jackson ES**

**Escandon ES**

## Pavilion Lighting Upgrade @

**Seguin ES**

## Houston ES Playscape CDBG



# Report Regarding Facilities Maintenance & Operations Projects Completed Projects: Elementary Schools

## Intercom Replacement @

**Garza ES**

**Gonzalez ES**

**Fields ES**

## Pavilion Lighting Upgrades @

**Houston ES**

**Alvarez ES**

**Roosevelt ES**

**Escandon ES**

**McAuliffe ES**

**Wilson ES**

**Thigpen Zavala ES**

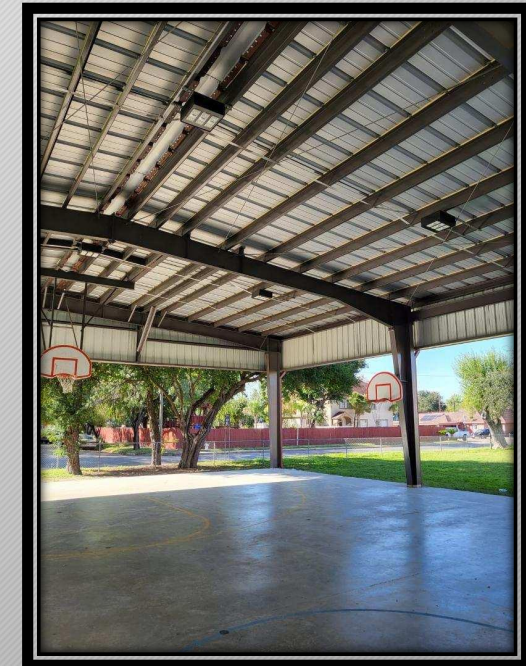
**Jackson ES**

## Pavilion Paint @

**Alvarez ES**

**Roosevelt ES**

**Wilson ES**





# **Report Regarding Facilities Maintenance & Operations Projects Upcoming Projects: Elementary Schools**

## **Chiller Replacements @**

**Milam ES  
Jackson ES  
Castaneda ES  
McAuliffe ES**

**Escandon ES  
Wilson ES  
Hendricks ES  
Seguin ES**

**Fields ES  
Perez ES  
Garza ES  
Sanchez ES**

**Gonzalez ES  
Thigpen Zavala ES**

## **Roof Upgrade @**

**Roosevelt ES  
Houston ES**

## **Cafeteria Expansion and or Modifications @**

**Jackson ES  
Milam ES  
Seguin ES**

**Escandon ES  
McAuliffe<sup>37</sup> ES  
Rayburn ES**

**Garza ES  
Wilson ES  
Gonzalez ES**

**Roosevelt ES**

# **Report Regarding Facilities Maintenance & Operations Projects**

## **Ongoing Projects: District Wide**

- **Crockett Fire Alarm Project**
- **Staff Development Portable Remodel**
- **Assessment Office Remodel**
- **Navarro Pavilion Paint and Lighting Upgrade**
- **Crockett Pavilion Paint and Lighting Upgrade**

# **Report Regarding Facilities Maintenance & Operations Projects**

## **Upcoming Projects: District Wide**

- **Crockett Roof Replacement**
- **McAllen Veterans Memorial Stadium Press Box**
- **Navarro Chiller Replacement**
- **Technology Center @ A.E.C.H.S. Campus**
- **Network Operations Center**



# Report Regarding Facilities Maintenance & Operations Projects



**Work Orders  
Submitted/Completed**

**January 2022**


**967/ 617**



BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: February 28, 2022

SUBMITTED BY: 

SUPERVISOR: 

Approved for presentation to the Board of Education:



41 Superintendent of Schools

BB.

PREPARED BY: Blanca Guerra

PABLO "PAUL" VILLARREAL JR., ASSESSOR & COLLECTOR  
MCALLEN I.S.D. TAXES COLLECTED FOR:  
JANUARY 2022

COMPARATIVE RATE OF COLLECTIONS

| MCALLEN I.S.D.<br>SML - 47   | ORIGINAL<br>TAX LEVY      | COLLECTED<br>TO DATE      | DROPPED YRS<br>AFTER PURGE | MODIF.<br>TO DATE         | TAXES<br>OUTSTANDING      | PERCENT<br>2021/2022 | COLLECTED<br>2020/2021 |
|------------------------------|---------------------------|---------------------------|----------------------------|---------------------------|---------------------------|----------------------|------------------------|
| 2021 TAX ROLL                | 90,489,805.41             | 74,596,867.85             | -                          | 2,520,678.28              | 18,413,615.84             | 80.20%               | 81.37%                 |
| 2020 & PRIOR YRS<br>ROLLBACK | 7,560,005.85<br>50,678.80 | 1,893,771.88<br>50,596.59 | (107,522.35)<br>-          | (436,051.05)<br>18,312.79 | 5,122,660.57<br>18,395.00 | 26.99%<br>73.34%     | 25.58%<br>41.19%       |
| TOTALS                       | 98,100,490.06             | 76,541,236.32             | (107,522.35)               | 2,102,940.02              | 23,554,671.41             |                      |                        |

BREAKDOWN OF TAX COLLECTIONS AND FEES FOR THE MONTH OF JANUARY 2022

|                            | MCALLEN ISD   | MONTHLY<br>MODIFICATIONS |
|----------------------------|---------------|--------------------------|
| CURRENT YEAR-BASE TAX      | 29,585,419.09 | (103,117.83) CURRENT     |
| CURRENT YEAR-P&I           | -             |                          |
| PRIOR YEARS-BASE TAX       | 145,929.95    | (17,810.90) PRIOR        |
| PRIOR YEARS-P&I            | 45,266.47     |                          |
| ROLLBACK                   | 12,635.99     | ROLLBACK                 |
| ROLLBACK P&I               | -             |                          |
| ATTORNEY FEES              | 26,636.71     | PURGED                   |
| TOTAL COLLECTIONS          | 29,815,888.21 | (120,928.73)             |
| LESS TRANSFERRED           | 13,910,849.83 |                          |
| LESS IN TRANSIT            | 15,890,190.97 |                          |
| LESS DUE TO HCAD COMM FEES | 1,652.41      |                          |
| LESS DUE TO CO TREASURER   | 13,195.00     |                          |
| BALANCE                    | (0.00)        |                          |

\*\*\*\*\*AFFIDAVIT\*\*\*\*\*

I, PABLO "PAUL" VILLARREAL JR., ASSESSOR-COLLECTOR OF TAXES FOR THE MCALLEN I.S.D., DO SOLEMNLY SWEAR THAT THE ABOVE STATEMENT OF TAXES COLLECTED BY ME FOR THE MONTH OF JANUARY IS CORRECT

*Pablo (Paul) Villarreal Jr.*  
ASSESSOR-COLLECTOR OF TAXES FOR MCALLEN I.S.D., TEXAS



SWORN AND SUBSCRIBED BEFORE ME THIS 11TH DAY OF FEBRUARY 2022 A.D.


*Jose E. Jaramillo*  
NOTARY PUBLIC, HIDALGO COUNTY, TEXAS



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



**43** Superintendent of Schools

**COMPARISON OF BUDGET TO REVENUES, EXPENDITURES AND ENCUMBRANCES  
FOR THE MONTH OF JANUARY 31, 2022**

|  | A<br>APPROVED<br>BUDGET<br>2020-21<br>01/31/21 | B<br>YTD ACTUAL<br>07/01/20<br>TO 01/31/21 | C<br>APPROVED<br>BUDGET<br>2021-22<br>01/31/22 | D<br>YTD ACTUAL<br>07/01/21<br>TO 01/31/22 | E<br>DIFFERENCE<br>C - D | F<br>OUTSTANDING<br>ENCUMBRANCES<br>02/01/22<br>TO 06/30/22 | G<br>YTD REVENUES,<br>EXPENSES AND<br>ENCUMBRANCES<br>D + F | H<br>BUDGET LESS<br>EXPENSES AND<br>ENCUMBRANCES<br>C - G |
|--|--|--|--|--|--------------------------|---|---|---|
| <b>REVENUES:</b>                           |  |  |  |  |                          |   |   |   |
| LOCAL AND INTERMEDIATE SOURCES             | \$4,438,089                                    | \$1,219,510                                | \$3,204,868                                    | \$1,429,180                                | \$1,775,688              |   | \$1,429,180   | \$1,775,688   |
| PROPERTY TAXES                             | 79,823,682                                     | 68,246,158                                 | 84,787,994                                     | 70,600,310                                 | 14,187,684               |   | 70,600,310  | 14,187,684  |
| STATE PROGRAM REVENUES                     | 137,774,797                                    | 73,554,007                                 | 133,393,577                                    | 64,162,592                                 | 69,230,985               |   | 64,162,592  | 69,230,985  |
| FEDERAL PROGRAM REVENUES                   | 21,364,409                                     | 11,558,899                                 | 28,271,720                                     | 14,496,759                                 | 13,774,961               |   | 14,496,759  | 13,774,961  |
| OTHER RESOURCES/NON-OPERATING REVENUES     | 4,296,271                                      | 4,448,701                                  | 26,115   | 205,890                                    | (179,775)                |   | 205,890   | (179,775)   |
| <b>SUB TOTAL</b>                           | <b>\$247,697,248</b>                           | <b>\$159,027,274</b>                       | <b>\$249,684,274</b>                           | <b>\$150,894,731</b>                       | <b>\$98,789,543</b>      |   | <b>\$150,894,731</b>  | <b>\$98,789,543</b>                                       |
| <b>EXPENDITURES:</b>                       |  |  |  |  |                          |   |   |   |
| 11 INSTRUCTION                             | \$131,230,504                                  | \$69,330,081                               | \$126,979,653                                  | \$24,465,136                               | \$102,514,517            | \$58,851,739  | \$83,316,875  | \$43,662,778  |
| 12 INST. RES. & MEDIA SERVICES             | 3,615,912                                      | 2,038,294                                  | 3,444,323                                      | 1,508,883                                  | 1,935,440                | 1,682,079   | 3,190,962   | 253,361   |
| 13 CURRICULUM DEV. & INST. STAFF DEV.      | 5,200,408                                      | 2,376,347                                  | 4,816,671                                      | 2,195,506                                  | 2,621,165                | 1,243,875   | 3,439,381   | 1,377,290   |
| 21 INST. LEADERSHIP                        | 3,217,665                                      | 1,497,194                                  | 3,314,537                                      | 1,525,706                                  | 1,788,831                | 1,292,318   | 2,818,024   | 496,513   |
| 23 SCHOOL LEADERSHIP                       | 13,799,984                                     | 7,787,405                                  | 13,372,516                                     | 6,752,014                                  | 6,620,502                | 5,476,306   | 12,228,320  | 1,144,196   |
| 31 GUID., COUNSELING & EVAL. SER.          | 9,938,038                                      | 5,177,990                                  | 9,945,139                                      | 4,319,608                                  | 5,625,531                | 4,597,103   | 8,916,711   | 1,028,428   |
| 32 SOCIAL WORK SERVICES                    | 1,944,243                                      | 1,064,410                                  | 2,067,175                                      | 973,615                                    | 1,093,560                | 920,984   | 1,894,598   | 172,577   |
| 33 HEALTH SERVICES                         | 3,113,748                                      | 1,612,630                                  | 3,043,743                                      | 1,207,007                                  | 1,836,736                | 1,420,862   | 2,627,869   | 415,874   |
| 34 STUDENT (PUPIL) TRANS.                  | 4,813,124                                      | 2,123,076                                  | 4,126,254                                      | 2,580,922                                  | 1,545,332                | 792,128   | 3,373,050   | 753,204   |
| 35 FOOD SERVICES                           | 19,374,472                                     | 11,473,853                                 | 19,119,495                                     | 8,424,649                                  | 10,694,846               | 6,380,230   | 14,804,879  | 4,314,616   |
| 36 CURRICULAR/EXTRACURRICULAR ACT.         | 9,943,857                                      | 3,941,232                                  | 9,984,635                                      | 4,254,219                                  | 5,730,416                | 2,933,958   | 7,188,177   | 2,796,458   |
| 41 GENERAL ADMINISTRATION                  | 8,732,663                                      | 4,598,994                                  | 8,614,094                                      | 4,502,494                                  | 4,111,600                | 2,401,822   | 6,904,316   | 1,709,778   |
| 51 PLANT MAINT. & OPERATIONS               | 22,119,726                                     | 10,978,758                                 | 26,363,608                                     | 11,943,925                                 | 14,419,684               | 6,575,506   | 18,519,430  | 7,844,178   |
| 52 SECURITY AND MONITORING SERV.           | 5,046,005                                      | 2,324,813                                  | 5,519,127                                      | 2,682,496                                  | 2,836,631                | 1,849,533   | 4,532,029   | 987,098   |
| 53 DATA PROCESSING SERVICES                | 6,887,293                                      | 3,435,295                                  | 6,240,704                                      | 3,342,746                                  | 2,897,958                | 2,757,930   | 6,100,676   | 140,028   |
| 61 COMMUNITY SERVICES                      | 42,161   | 18,783                                     | 78,122   | 31,071                                     | 47,051                   | 53,405  | 84,476  | (6,354)   |
| 71 DEBT SERVICE                            | 7,078,589                                      | 2,488,043                                  | 9,236,505                                      | 6,159,473                                  | 3,077,032                | 0   | 6,159,473   | 3,077,032   |
| 81 FAC. ACQUISITION & CONST.               | 938,018  | 332,552                                    | 3,553,196                                      | 315,974                                    | 3,237,222                | 1,150,500   | 1,466,474   | 2,086,722   |
| 95 PMT. TO JUV. JUSTICE ALT. ED. PRG.      | 40,000   | 40,000                                     | 40,000   | 40,000                                     | 0                        | 0   | 40,000  | 0   |
| 99 OTHER INTERGOVERNMENTAL CHARGES         | 906,079  | 674,612                                    | 939,270  | 695,830                                    | 243,440                  | 233,927   | 929,757   | 9,513   |
| 00 OTHER USES/NON-OPERATING EXPENSES       | 2,285,330                                      | 500,000                                    | 123,223  | 38,223                                     | 85,000                   | 0   | 38,223  | 85,000  |
| <b>SUB TOTAL</b>                           | <b>\$260,267,819</b>                           | <b>\$133,814,362</b>                       | <b>\$260,921,990</b>                           | <b>\$87,959,496</b>                        | <b>\$172,962,494</b>     | <b>\$100,614,205</b>  | <b>\$188,573,701</b>  | <b>\$72,348,289</b>                                       |
| REVENUES OVER (UNDER) EXPENDITURES         |  | \$25,212,912                               |  | \$62,935,235                               |                          |   |   |   |
| BEGINNING FUND BALANCE                     |  | 97,700,231                                 |  | 107,594,997                                |                          |   |   |   |
| PRELIMINARY ENDING FUND BALANCE            |  | <u>\$122,913,143</u>                       |  | <u>\$170,530,232</u>                       |                          |   |   |   |
| OPTIMUM FUND BALANCE FOR UNFORESEEN EVENTS |  | \$103,042,102                              |  | \$104,077,381                              |                          |   |   |   |





# Monthly Investment Report

PREPARED FOR MCALLEN ISD

JANUARY 31, 2022



**PATTERSON  
& ASSOCIATES**

A MEEDER INVESTMENT MANAGEMENT COMPANY

45

WITH YOU. FOR YOU.

# The Fed Looks for Balance

The Federal Reserve is definitely in a hawkish mood. The economy continues to grow solidly at a 7% pace. That means the time for accommodation has passed with little reason to initiate new stimulus or maintain pandemic level support. The “solid” recovery means a faster move to less accommodation and faster rate hikes.

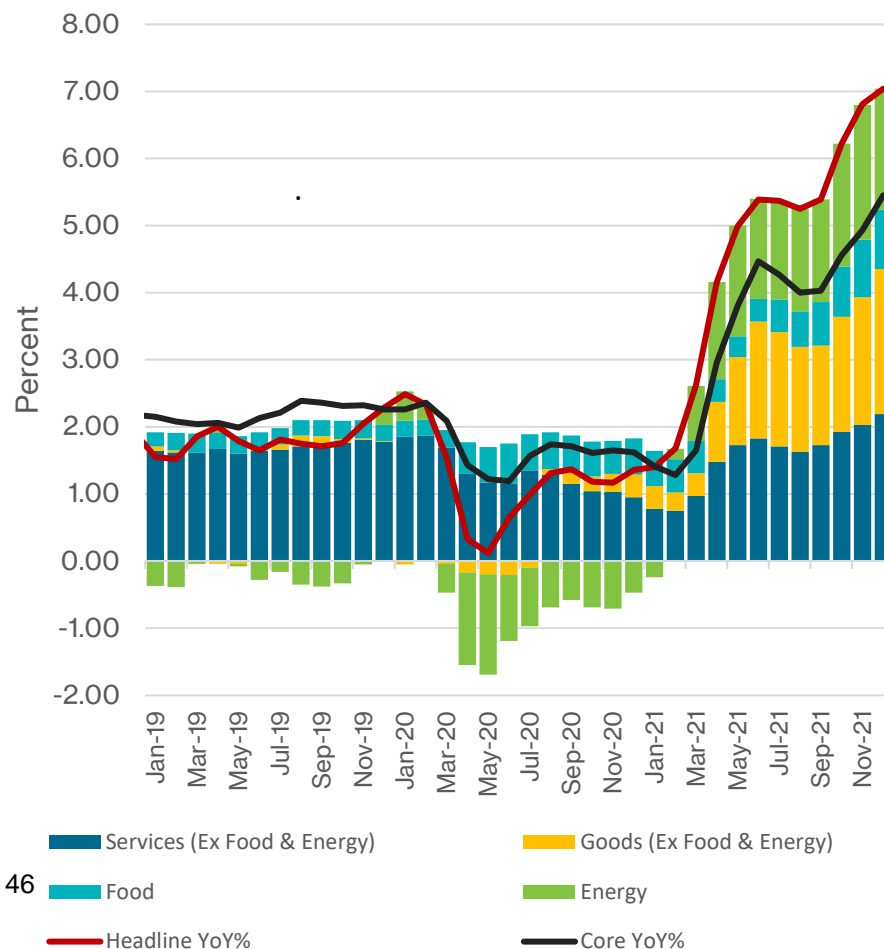
Chair Powell has indicated that the taper will be complete in March 2022 but questions remain whether asset sales or maturity run-off will produce the needed results.

The first tool the Fed uses is communication to provide the markets guidance allowing further actions to be enacted appropriately. The urgency comes from the mounting inflation which now stands at 5%; 2% above the Fed target. The second tool this time will be to eliminate the accommodative buying of securities. This should end in March. An actual rate hike of the overnight rate should start thereafter.

The price of oil (above \$100) is one element in the pace of the move as its impact on inflation and consumer psyche is immense.

The liquidity cure has now become the disease. Can this inflation be tamed? A key question is whether inflation is primarily cyclical or covid driven. If covid driven, raising rates too fast and large a rate increase could result in recession. If cyclical, continued reduction is appropriate. How fast and how much the Fed can raise rates before throttling growth is their balancing question.

## Consumer Price Index (CPI) Year over Year



# Global Recovery at the Mercy of Covid

All Fed actions will focus on inflation and employment. But there several other issues with major implications.

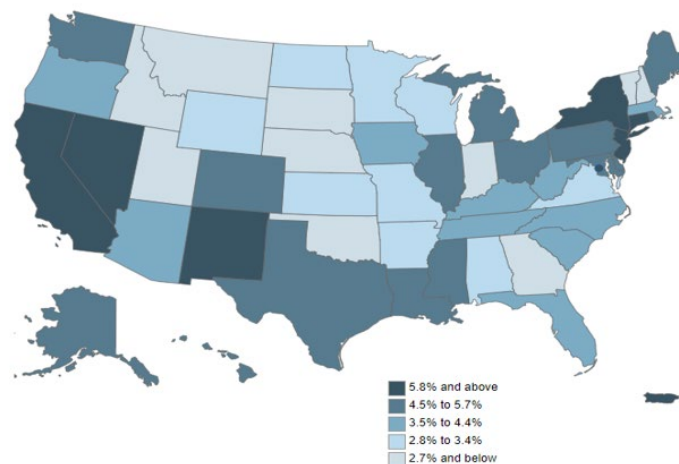
According to the US Treasury, US national debt has topped \$30T (125% of GDP) for the first time in history so servicing that debt becomes a real consideration. It affects the value of the dollar as a reserve currency and its global confidence in the dollar. Elevated inflation and slower growth would be a massive problem especially with interest rates increasing, elevated healthcare costs on an aging population, declining workforce participation, and DC's expenditures outpacing tax receipts. Covid was the major issue in rising debt with \$5.7T added in two administrations. This is not dangerous if we can indefinitely outpace GDP so the economy must be supported.

Employment remains a big question mark. The jobs opening and turnover index (JOLTS) rose in December and quit rates (10.9M) remain at a scary 2.9%.

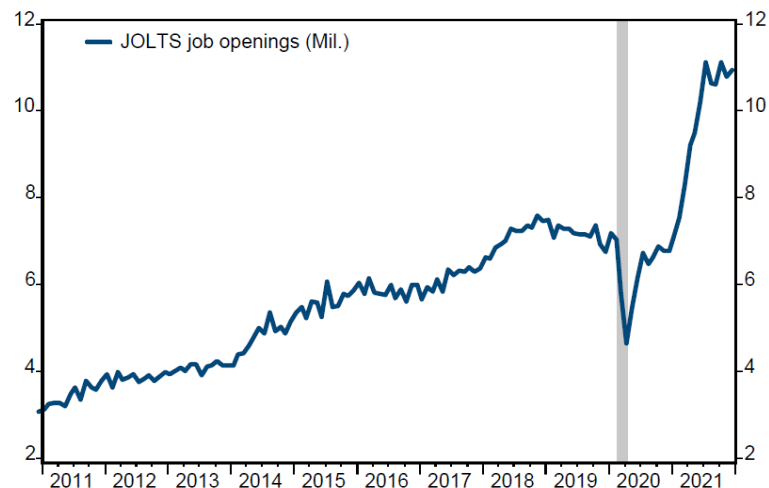
In addition, geo-politics add a measure of uncertainty and could force investors back into the bond markets for safety, thereby lowering rates. China and North Korea continue to rattle swords and Russia has drawn its sword in Ukraine where both sides are mounting 'defenses'. 'Russia's Roulette' (as termed by The Economist) may result in stiff sanctions including fiscal financial institution blocks and resulting stress on our European allies.

All this adds to the balance that the Fed must achieve in timely and reasonable actions.

State unemployment rates, December 2021, seasonally adjusted



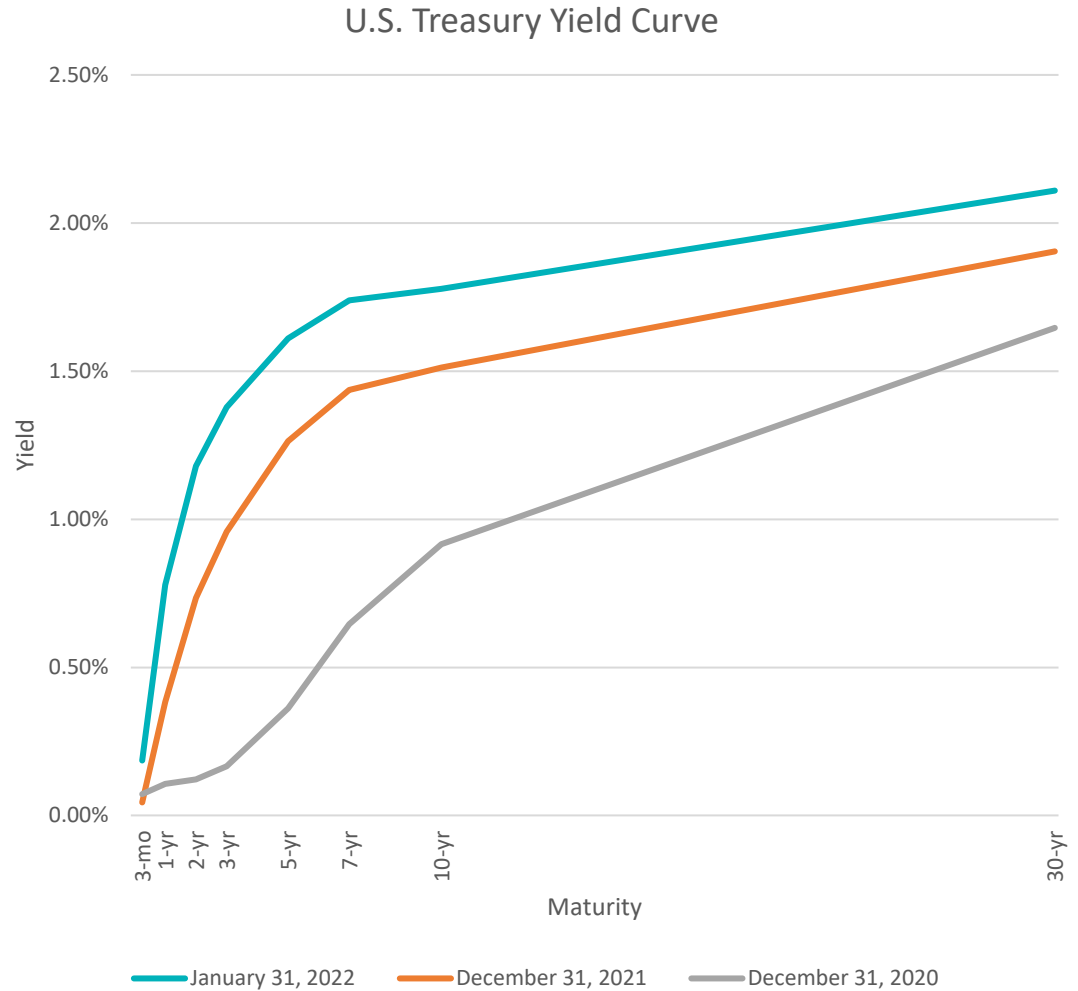
Source: Bureau of Labor Statistics 2/4/2022



Source: Bureau of Labor Statistics/Haver Analytics

# The Fed's Planned Taper has Its Uplifting Effect

- The Fed's announcements to taper quickly and decisively raised the entire curve as longer-term investors fled decreasing bond prices
- The markets anticipate rate hikes starting in March, even expecting four 0.25% hikes this year.
- Some expectations are for a 0.50% hike initially, but the Fed has many factors to consider before making a major jump (moves are normally 0.25% each).
- The market as shown does the Fed's work as rates across the curve rise – but not a parallel move. That will depend crucially on the first overnight rate size in March.



*McAllen Independent School District*  
 Monthly Investment Report  
 January 1, 2022 – January 31, 2022

**Portfolio Summary Management Report**

This report and investment portfolio of the District is in compliance with the District investment strategy as expressed in the District's investment policy and relevant provisions of the Government Code, Chapter 2256, the Public Funds Investment Act.

|   |  |
|---|--|
| <p><b><u>Portfolio as of 12/31/21:</u></b></p> <p>Beginning Book Value           \$ 146,918,615</p> <p>Beginning Market Value       \$ 146,840,859</p><br><p>WAM at Beginning Period Date<sup>1</sup>       97 days</p> <p><i>(Increase in market value is due to seasonal cash inflows)</i></p><br><p style="text-align: center;"><b>Average Yield to Maturity for period           0.146%</b></p> <p style="text-align: center;"><b>Average Yield 1-year Treasury Bill for period   0.540%</b></p> <p style="text-align: center;"><b>Average Yield 2-year Treasury Note for period   0.970%</b></p> | <p><b><u>Portfolio as of 01/31/22:</u></b></p> <p>Ending Book Value               \$ 164,394,077</p> <p>Ending Market Value           \$ 164,178,836</p><br><p>Unrealized Gain/Loss               \$   (215,241)</p><br><p>WAM at Ending Period Date<sup>1</sup>               101 days</p><br><p>Change in Market Value<sup>2</sup>               \$ 17,337,977</p> |
|---|--|

*Cynthia Medrano-Richards*

\_\_\_\_\_  
 Cynthia Medrano-Richards, Asst. Superintendent for Bus. Operations  
 McAllen ISD

*Iris Luna*

\_\_\_\_\_  
 Iris Luna, Director of Accounting  
 McAllen ISD

*Dyanira Diaz*

\_\_\_\_\_  
 Dyanira Diaz, Coordinator for Accounting  
 McAllen ISD

*Adelita Felix*

\_\_\_\_\_  
 Adelita Felix, CFO  
 McAllen ISD

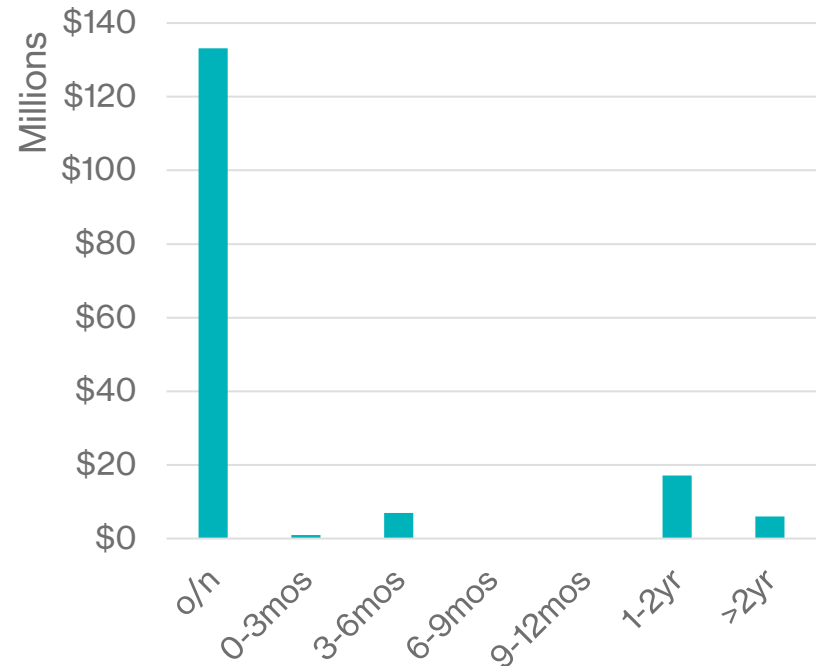
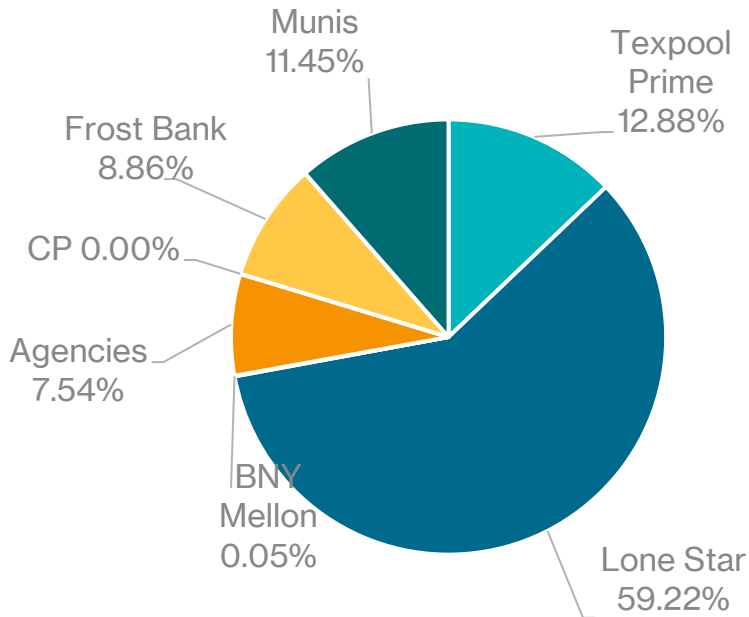
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 1 WAM – weighted average maturity

2 “Change in Market Value” is required data, but will primarily reflect the receipt and expenditure of the District’s funds from month to month. *Patterson & Associates* has assisted in the preparation of this consolidated investment report, with additional input provided by McAllen ISD.

# Portfolio Overview

As of January 31, 2022

- P&A constantly reviews your portfolio for optimal asset allocation and a controlled average maturity because a diversified portfolio can better adjust to volatile market conditions. These are unusual times and where extensions can be made it is important to make them to find any available safe value in the markets.
- The graphs below show asset allocations by market sector and by maturity in your portfolio. Liquidity has been reduced to little or no value but with a flat short curve it may be the only sector available out to twelve months without the use of CP. Our expectation is of continuing dismally low rates, but we look for value in your authorized sectors to capture the yield available as markets change.
- The non-cash portion of your portfolio is yielding 0.45%.



**McAllen ISD**  
**Portfolio Management**  
**Portfolio Summary**  
**January 31, 2022**

| <b>Investments</b>                | <b>Par Value</b>      | <b>Market Value</b>   | <b>Book Value</b>     | <b>% of Portfolio</b> | <b>Term</b> | <b>Days to Maturity</b> | <b>YTM 365 Equiv.</b> |
|-----------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-------------|-------------------------|-----------------------|
| BNY Mellon                        | 76,850.63             | 76,850.63             | 76,850.63             | 0.05                  | 1           | 1                       | 0.000                 |
| Frost Bank                        | 14,567,859.13         | 14,567,859.13         | 14,567,859.13         | 8.86                  | 1           | 1                       | 0.010                 |
| Federal Agency Coupon Securities  | 12,400,000.00         | 12,300,018.58         | 12,396,230.00         | 7.54                  | 907         | 817                     | 0.748                 |
| Municipal Bonds                   | 18,685,000.00         | 18,705,164.40         | 18,824,193.16         | 11.45                 | 554         | 336                     | 0.335                 |
| Texpool/Texpool Prime             | 21,172,670.59         | 21,172,670.59         | 21,172,670.59         | 12.88                 | 1           | 1                       | 0.068                 |
| Lone Star                         | 97,356,273.15         | 97,356,273.15         | 97,356,273.15         | 59.22                 | 1           | 1                       | 0.071                 |
|                                   | <b>164,258,653.50</b> | <b>164,178,836.48</b> | <b>164,394,076.66</b> | <b>100.00%</b>        | <b>133</b>  | <b>101</b>              | <b>0.146</b>          |
| <b>Investments</b>                |                       |                       |                       |                       |             |                         |                       |
| <b>Cash and Accrued Interest</b>  |                       |                       |                       |                       |             |                         |                       |
| Accrued Interest at Purchase      |                       | 3,261.22              | 3,261.22              |                       |             |                         |                       |
| Subtotal                          |                       | 3,261.22              | 3,261.22              |                       |             |                         |                       |
| <b>Total Cash and Investments</b> | <b>164,258,653.50</b> | <b>164,182,097.70</b> | <b>164,397,337.88</b> |                       | <b>133</b>  | <b>101</b>              | <b>0.146</b>          |

| <b>Total Earnings</b> | <b>January 31 Month Ending</b> | <b>Fiscal Year To Date</b> |
|-----------------------|--------------------------------|----------------------------|
| Current Year          | 17,052.90                      | 91,650.09                  |

The following reports are submitted in accordance with the Public Funds Investment Act (Texas Gov't Code 2256). The reports also offer supplemental information not required by the Act in order to fully inform the governing body of McAllen ISD of the position and activity within the District's portfolio of investment. The reports include a management summary overview, a detailed inventory report for the end of the period, a transaction report, as well as graphic representations of the portfolio to provide full disclosure to the governing body.



Feb 23, 2022

Adelita Felix, Chief Financial Officer

**McAllen ISD  
Summary by Type  
January 31, 2022  
Grouped by Fund**

Patterson & Associates  
901 S. MoPac  
Suite 195  
Austin, TX 78746  
-

| Security Type                      | Number of Investments | Par Value             | Book Value            | % of Portfolio | Average YTM 365 | Average Days to Maturity |
|------------------------------------|-----------------------|-----------------------|-----------------------|----------------|-----------------|--------------------------|
| <b>Fund: Activity Fund</b>         |                       |                       |                       |                |                 |                          |
| Frost Bank                         | 1                     | 1,799,046.04          | 1,799,046.04          | 1.09           | 0.010           | 1                        |
| <b>Subtotal</b>                    | <b>1</b>              | <b>1,799,046.04</b>   | <b>1,799,046.04</b>   | <b>1.09</b>    | <b>0.010</b>    | <b>1</b>                 |
| <b>Fund: Clearing Fund</b>         |                       |                       |                       |                |                 |                          |
| Frost Bank                         | 1                     | 5,268,744.77          | 5,268,744.77          | 3.20           | 0.010           | 1                        |
| <b>Subtotal</b>                    | <b>1</b>              | <b>5,268,744.77</b>   | <b>5,268,744.77</b>   | <b>3.20</b>    | <b>0.010</b>    | <b>1</b>                 |
| <b>Fund: Capital Projects Fund</b> |                       |                       |                       |                |                 |                          |
| Frost Bank                         | 2                     | 220,279.17            | 220,279.17            | 0.13           | 0.010           | 1                        |
| Lone Star                          | 4                     | 17,369,804.06         | 17,369,804.06         | 10.57          | 0.054           | 1                        |
| <b>Subtotal</b>                    | <b>6</b>              | <b>17,590,083.23</b>  | <b>17,590,083.23</b>  | <b>10.70</b>   | <b>0.054</b>    | <b>1</b>                 |
| <b>Fund: Debt Service Fund</b>     |                       |                       |                       |                |                 |                          |
| Frost Bank                         | 1                     | 5,434.75              | 5,434.75              | 0.00           | 0.010           | 1                        |
| Lone Star                          | 2                     | 6,276,536.18          | 6,276,536.18          | 3.82           | 0.080           | 1                        |
| <b>Subtotal</b>                    | <b>3</b>              | <b>6,281,970.93</b>   | <b>6,281,970.93</b>   | <b>3.82</b>    | <b>0.080</b>    | <b>1</b>                 |
| <b>Fund: General Fund</b>          |                       |                       |                       |                |                 |                          |
| Frost Bank                         | 1                     | 5,043,173.30          | 5,043,173.30          | 3.07           | 0.010           | 1                        |
| Federal Agency Coupon Securities   | 3                     | 7,400,000.00          | 7,400,000.00          | 4.50           | 0.662           | 775                      |
| Lone Star                          | 3                     | 68,193,270.62         | 68,193,270.62         | 41.48          | 0.076           | 1                        |
| Municipal Bonds                    | 8                     | 12,595,000.00         | 12,698,444.17         | 7.72           | 0.335           | 291                      |
| Texpool/Texpool Prime              | 2                     | 21,172,670.59         | 21,172,670.59         | 12.88          | 0.068           | 1                        |
| <b>Subtotal</b>                    | <b>17</b>             | <b>114,404,114.51</b> | <b>114,507,558.68</b> | <b>69.65</b>   | <b>0.138</b>    | <b>83</b>                |
| <b>Fund: Plan 457 Fund</b>         |                       |                       |                       |                |                 |                          |
| Frost Bank                         | 1                     | 3,386.79              | 3,386.79              | 0.00           | 0.010           | 1                        |
| <b>Subtotal</b>                    | <b>1</b>              | <b>3,386.79</b>       | <b>3,386.79</b>       | <b>0.00</b>    | <b>0.010</b>    | <b>1</b>                 |



**McAllen ISD  
Summary by Type  
January 31, 2022  
Grouped by Fund**

| Security Type                    | Number of<br>Investments | Par<br>Value          | Book Value            | % of<br>Portfolio | Average<br>YTM 365 | Average Days<br>to Maturity |
|----------------------------------|--------------------------|-----------------------|-----------------------|-------------------|--------------------|-----------------------------|
| <b>Fund: Proprietary Fund</b>    |                          |                       |                       |                   |                    |                             |
| Frost Bank                       | 1                        | 2,227,794.31          | 2,227,794.31          | 1.36              | 0.010              | 1                           |
| Lone Star                        | 2                        | 5,516,662.29          | 5,516,662.29          | 3.36              | 0.050              | 1                           |
| <b>Subtotal</b>                  | <b>3</b>                 | <b>7,744,456.60</b>   | <b>7,744,456.60</b>   | <b>4.72</b>       | <b>0.039</b>       | <b>1</b>                    |
| <b>Fund: QSCB - Reserve Fund</b> |                          |                       |                       |                   |                    |                             |
| BNY Mellon                       | 1                        | 76,850.63             | 76,850.63             | 0.05              | 0.000              | 1                           |
| Federal Agency Coupon Securities | 2                        | 5,000,000.00          | 4,996,230.00          | 3.04              | 0.876              | 880                         |
| Municipal Bonds                  | 3                        | 6,090,000.00          | 6,125,748.99          | 3.73              | 0.334              | 431                         |
| <b>Subtotal</b>                  | <b>6</b>                 | <b>11,166,850.63</b>  | <b>11,198,829.62</b>  | <b>6.82</b>       | <b>0.574</b>       | <b>628</b>                  |
| <b>Fund: QSCB - Debt Service</b> |                          |                       |                       |                   |                    |                             |
| BNY Mellon                       | 1                        | 0.00                  | 0.00                  | 0.00              | 0.000              | 0                           |
| <b>Subtotal</b>                  | <b>1</b>                 | <b>0.00</b>           | <b>0.00</b>           | <b>0.00</b>       | <b>0.000</b>       | <b>0</b>                    |
| <b>Total and Average</b>         | <b>39</b>                | <b>164,258,653.50</b> | <b>164,394,076.66</b> | <b>100.00</b>     | <b>0.146</b>       | <b>101</b>                  |



**McAllen ISD  
Fund ACT - Activity Fund  
Investments by Fund  
January 31, 2022**

Patterson & Associates  
901 S. MoPac  
Suite 195  
Austin, TX 78746  
-

| CUSIP                                | Investment # | Issuer                     | Purchase Date | Book Value          | Par Value           | Market Value        | Current Rate | YTM 360      | YTM 365      | Maturity Days To Date Maturity |
|--------------------------------------|--------------|----------------------------|---------------|---------------------|---------------------|---------------------|--------------|--------------|--------------|--------------------------------|
| <b>Frost Bank</b>                    |              |                            |               |                     |                     |                     |              |              |              |                                |
| 999915                               | 10020        | Frost Bank Public Checking | 07/01/2021    | 1,799,046.04        | 1,799,046.04        | 1,799,046.04        | 0.010        | 0.009        | 0.010        | 1                              |
| <b>Subtotal and Average</b>          |              |                            |               | <b>1,799,046.04</b> | <b>1,799,046.04</b> | <b>1,799,046.04</b> |              | <b>0.010</b> | <b>0.010</b> | <b>1</b>                       |
| <b>Total Investments and Average</b> |              |                            |               | <b>1,799,046.04</b> | <b>1,799,046.04</b> | <b>1,799,046.04</b> |              | <b>0.010</b> | <b>0.010</b> | <b>1</b>                       |

**Fund CLEAR - Clearing Fund  
Investments by Fund  
January 31, 2022**

| CUSIP                                | Investment # | Issuer                     | Purchase Date | Book Value          | Par Value           | Market Value        | Current Rate | YTM 360      | YTM 365 | Maturity Days To Date Maturity |
|--------------------------------------|--------------|----------------------------|---------------|---------------------|---------------------|---------------------|--------------|--------------|---------|--------------------------------|
| <b>Frost Bank</b>                    |              |                            |               |                     |                     |                     |              |              |         |                                |
| 999914                               | 10019        | Frost Bank Public Checking | 07/01/2021    | 5,268,744.77        | 5,268,744.77        | 5,268,744.77        | 0.010        | 0.009        | 0.010   | 1                              |
| <b>Subtotal and Average</b>          |              |                            |               | <b>5,268,744.77</b> | <b>5,268,744.77</b> | <b>5,268,744.77</b> | <b>0.010</b> | <b>0.010</b> |         | <b>1</b>                       |
| <b>Total Investments and Average</b> |              |                            |               | <b>5,268,744.77</b> | <b>5,268,744.77</b> | <b>5,268,744.77</b> | <b>0.010</b> | <b>0.010</b> |         | <b>1</b>                       |

**Fund CP - Capital Projects Fund  
Investments by Fund  
January 31, 2022**

| CUSIP                                | Investment # | Issuer                        | Purchase Date | Book Value           | Par Value            | Market Value         | Current Rate | YTM 360      | YTM 365      | Maturity Days To Date Maturity |
|--------------------------------------|--------------|-------------------------------|---------------|----------------------|----------------------|----------------------|--------------|--------------|--------------|--------------------------------|
| <b>Frost Bank</b>                    |              |                               |               |                      |                      |                      |              |              |              |                                |
| 999922                               | 10103        | Frost Bank Public Checking    | 07/01/2021    | 95,887.56            | 95,887.56            | 95,887.56            | 0.010        | 0.009        | 0.010        | 1                              |
| SYS10109                             | 10109        | Frost Bank Public Checking    | 07/01/2021    | 124,391.61           | 124,391.61           | 124,391.61           | 0.010        | 0.009        | 0.010        | 1                              |
| <b>Subtotal and Average</b>          |              |                               |               | <b>220,279.17</b>    | <b>220,279.17</b>    | <b>220,279.17</b>    |              | <b>0.010</b> | <b>0.010</b> | <b>1</b>                       |
| <b>Lone Star</b>                     |              |                               |               |                      |                      |                      |              |              |              |                                |
| 108906G                              | 10101        | Lone Star Corporate Overnight | 12/18/2019    | 1,227,300.60         | 1,227,300.60         | 1,227,300.60         | 0.090        | 0.088        | 0.090        | 1                              |
| 108906I                              | 10108        | Lone Star Corporate Overnight | 02/21/2020    | 8,365,300.36         | 8,365,300.36         | 8,365,300.36         | 0.090        | 0.088        | 0.090        | 1                              |
| 108906H                              | 10102        | Lone Star Government ON       | 12/18/2019    | 1,313,950.84         | 1,313,950.84         | 1,313,950.84         | 0.010        | 0.009        | 0.010        | 1                              |
| 108906J                              | 10113        | Lone Star Government ON       | 03/12/2020    | 6,463,252.26         | 6,463,252.26         | 6,463,252.26         | 0.010        | 0.009        | 0.010        | 1                              |
| <b>Subtotal and Average</b>          |              |                               |               | <b>17,369,804.06</b> | <b>17,369,804.06</b> | <b>17,369,804.06</b> |              | <b>0.053</b> | <b>0.054</b> | <b>1</b>                       |
| <b>Total Investments and Average</b> |              |                               |               | <b>17,590,083.23</b> | <b>17,590,083.23</b> | <b>17,590,083.23</b> |              | <b>0.053</b> | <b>0.054</b> | <b>1</b>                       |

**Fund DS - Debt Service Fund  
Investments by Fund  
January 31, 2022**

| CUSIP                                | Investment # | Issuer                        | Purchase Date | Book Value          | Par Value           | Market Value        | Current Rate | YTM 360      | YTM 365      | Maturity Days To Date Maturity |
|--------------------------------------|--------------|-------------------------------|---------------|---------------------|---------------------|---------------------|--------------|--------------|--------------|--------------------------------|
| <b>Frost Bank</b>                    |              |                               |               |                     |                     |                     |              |              |              |                                |
| 999918                               | 10023        | Frost Bank Public Checking    | 07/01/2021    | 5,434.75            | 5,434.75            | 5,434.75            | 0.010        | 0.009        | 0.010        | 1                              |
| <b>Subtotal and Average</b>          |              |                               |               | <b>5,434.75</b>     | <b>5,434.75</b>     | <b>5,434.75</b>     |              | <b>0.010</b> | <b>0.010</b> | <b>1</b>                       |
| <b>Lone Star</b>                     |              |                               |               |                     |                     |                     |              |              |              |                                |
| 108906B                              | 10032        | Lone Star Corporate Overnight | 10/22/2015    | 5,478,783.44        | 5,478,783.44        | 5,478,783.44        | 0.090        | 0.088        | 0.090        | 1                              |
| 108906C                              | 10089        | Lone Star Government ON       | 08/05/2019    | 797,752.74          | 797,752.74          | 797,752.74          | 0.010        | 0.009        | 0.010        | 1                              |
| <b>Subtotal and Average</b>          |              |                               |               | <b>6,276,536.18</b> | <b>6,276,536.18</b> | <b>6,276,536.18</b> |              | <b>0.079</b> | <b>0.080</b> | <b>1</b>                       |
| <b>Total Investments and Average</b> |              |                               |               | <b>6,281,970.93</b> | <b>6,281,970.93</b> | <b>6,281,970.93</b> |              | <b>0.079</b> | <b>0.080</b> | <b>1</b>                       |

**Fund GEN - General Fund  
Investments by Fund  
January 31, 2022**

| CUSIP                                   | Investment # | Issuer                         | Purchase Date | Book Value            | Par Value             | Market Value          | Current Rate | YTM 360      | YTM 365      | Maturity Date | Days To Maturity |
|---|--------------|--------------------------------|---------------|-----------------------|-----------------------|-----------------------|--------------|--------------|--------------|---------------|------------------|
| <b>Frost Bank</b>                       |              |                                |               |                       |                       |                       |              |              |              |               |                  |
| 999917                                  | 10022        | Frost Bank Public Checking     | 07/01/2021    | 5,043,173.30          | 5,043,173.30          | 5,043,173.30          | 0.010        | 0.009        | 0.010        |               | 1                |
| <b>Subtotal and Average</b>             |              |                                |               | <b>5,043,173.30</b>   | <b>5,043,173.30</b>   | <b>5,043,173.30</b>   |              | <b>0.010</b> | <b>0.010</b> |               | <b>1</b>         |
| <b>Federal Agency Coupon Securities</b> |              |                                |               |                       |                       |                       |              |              |              |               |                  |
| 3130ANDP2                               | 10143        | FHLB Call Note                 | 08/18/2021    | 2,400,000.00          | 2,400,000.00          | 2,378,631.72          | 0.250        | 0.246        | 0.250        | 08/18/2023    | 563              |
| 3130APQM0                               | 10150        | FHLB Call Note                 | 11/18/2021    | 3,000,000.00          | 3,000,000.00          | 2,969,340.21          | 1.000        | 0.986        | 1.000        | 11/18/2024    | 1,021            |
| 3130APQU2                               | 10151        | FHLB Call Note                 | 11/22/2021    | 2,000,000.00          | 2,000,000.00          | 1,985,726.04          | 0.650        | 0.641        | 0.650        | 11/22/2023    | 659              |
| <b>Subtotal and Average</b>             |              |                                |               | <b>7,400,000.00</b>   | <b>7,400,000.00</b>   | <b>7,333,697.97</b>   |              | <b>0.653</b> | <b>0.662</b> |               | <b>774</b>       |
| <b>Municipal Bonds</b>                  |              |                                |               |                       |                       |                       |              |              |              |               |                  |
| 476637AM5                               | 10138        | Jersey City NJ Redev Agy       | 05/26/2021    | 2,920,931.90          | 2,910,000.00          | 2,918,700.90          | 1.500        | 0.315        | 0.320        | 05/26/2022    | 114              |
| 64990FC93                               | 10140        | NY State Dorm Authority        | 06/23/2021    | 1,000,000.00          | 1,000,000.00          | 999,640.00            | 0.167        | 0.164        | 0.167        | 03/15/2022    | 42               |
| 64971WJ35                               | 10123        | NYC Trans Finance Auth         | 10/13/2020    | 2,507,467.74          | 2,500,000.00          | 2,507,900.00          | 1.650        | 0.443        | 0.449        | 05/01/2022    | 89               |
| 678720KM4                               | 10145        | Oklahoma County OK ISD         | 09/23/2021    | 1,103,467.36          | 1,100,000.00          | 1,089,209.00          | 0.500        | 0.234        | 0.238        | 09/01/2023    | 577              |
| 678553AP3                               | 10147        | Oklahoma City Econ Dev Trust   | 09/27/2021    | 1,031,920.82          | 1,000,000.00          | 1,023,720.00          | 3.204        | 0.246        | 0.250        | 03/01/2023    | 393              |
| 73358W4V3                               | 10148        | Port Authority of NY & NJ      | 10/15/2021    | 1,519,129.90          | 1,505,000.00          | 1,501,568.60          | 1.086        | 0.414        | 0.420        | 07/01/2023    | 515              |
| 8717027U4                               | 10141        | Syracuse NY                    | 06/30/2021    | 1,615,526.45          | 1,580,000.00          | 1,604,821.80          | 2.000        | 0.246        | 0.249        | 05/15/2023    | 468              |
| 953107AB5                               | 10142        | West Hartford CT               | 07/08/2021    | 1,000,000.00          | 1,000,000.00          | 990,170.00            | 0.466        | 0.459        | 0.465        | 07/01/2023    | 515              |
| <b>Subtotal and Average</b>             |              |                                |               | <b>12,698,444.17</b>  | <b>12,595,000.00</b>  | <b>12,635,730.30</b>  |              | <b>0.331</b> | <b>0.335</b> |               | <b>290</b>       |
| <b>Texpool/Texpool Prime</b>            |              |                                |               |                       |                       |                       |              |              |              |               |                  |
| 999921                                  | 10092        | Texpool                        | 08/05/2019    | 10,562,116.72         | 10,562,116.72         | 10,562,116.72         | 0.038        | 0.037        | 0.037        |               | 1                |
| 999920                                  | 10034        | Texpool Prime                  | 11/03/2015    | 10,610,553.87         | 10,610,553.87         | 10,610,553.87         | 0.098        | 0.096        | 0.097        |               | 1                |
| <b>Subtotal and Average</b>             |              |                                |               | <b>21,172,670.59</b>  | <b>21,172,670.59</b>  | <b>21,172,670.59</b>  |              | <b>0.067</b> | <b>0.068</b> |               | <b>1</b>         |
| <b>Lone Star</b>                        |              |                                |               |                       |                       |                       |              |              |              |               |                  |
| 108906F                                 | 10099        | Lone Star Corporate Overnight+ | 11/18/2019    | 0.00                  | 0.00                  | 0.00                  |              |              |              |               | 1                |
| 108906                                  | 10003        | Lone Star Corporate Overnight  | 11/01/2014    | 56,440,914.01         | 56,440,914.01         | 56,440,914.01         | 0.090        | 0.088        | 0.090        |               | 1                |
| 108906D                                 | 10090        | Lone Star Government ON        | 08/05/2019    | 11,752,356.61         | 11,752,356.61         | 11,752,356.61         | 0.010        | 0.009        | 0.010        |               | 1                |
| <b>Subtotal and Average</b>             |              |                                |               | <b>68,193,270.62</b>  | <b>68,193,270.62</b>  | <b>68,193,270.62</b>  |              | <b>0.075</b> | <b>0.076</b> |               | <b>1</b>         |
| <b>Total Investments and Average</b>    |              |                                |               | <b>114,507,558.68</b> | <b>114,404,114.51</b> | <b>114,378,542.78</b> |              | <b>0.136</b> | <b>0.138</b> |               | <b>83</b>        |

**Fund PLAN457 - Plan 457 Fund  
Investments by Fund  
January 31, 2022**

| CUSIP                                | Investment # | Issuer                     | Purchase Date | Book Value      | Par Value       | Market Value    | Current Rate | YTM 360      | YTM 365 | Maturity Days To Date Maturity |
|--------------------------------------|--------------|----------------------------|---------------|-----------------|-----------------|-----------------|--------------|--------------|---------|--------------------------------|
| <b>Frost Bank</b>                    |              |                            |               |                 |                 |                 |              |              |         |                                |
| 999916                               | 10021        | Frost Bank Public Checking | 07/01/2021    | 3,386.79        | 3,386.79        | 3,386.79        | 0.010        | 0.009        | 0.010   | 1                              |
| <b>Subtotal and Average</b>          |              |                            |               | <b>3,386.79</b> | <b>3,386.79</b> | <b>3,386.79</b> | <b>0.010</b> | <b>0.010</b> |         | <b>1</b>                       |
| <b>Total Investments and Average</b> |              |                            |               | <b>3,386.79</b> | <b>3,386.79</b> | <b>3,386.79</b> | <b>0.010</b> | <b>0.010</b> |         | <b>1</b>                       |

**Fund PROP - Proprietary Fund  
Investments by Fund  
January 31, 2022**

| CUSIP                                | Investment # | Issuer                        | Purchase Date | Book Value          | Par Value           | Market Value        | Current Rate | YTM 360      | YTM 365      | Maturity Days To Date Maturity |
|--------------------------------------|--------------|-------------------------------|---------------|---------------------|---------------------|---------------------|--------------|--------------|--------------|--------------------------------|
| <b>Frost Bank</b>                    |              |                               |               |                     |                     |                     |              |              |              |                                |
| 999919                               | 10024        | Frost Bank Public Checking    | 07/01/2021    | 2,227,794.31        | 2,227,794.31        | 2,227,794.31        | 0.010        | 0.009        | 0.010        | 1                              |
| <b>Subtotal and Average</b>          |              |                               |               | <b>2,227,794.31</b> | <b>2,227,794.31</b> | <b>2,227,794.31</b> |              | <b>0.010</b> | <b>0.010</b> | <b>1</b>                       |
| <b>Lone Star</b>                     |              |                               |               |                     |                     |                     |              |              |              |                                |
| 108906A                              | 10025        | Lone Star Corporate Overnight | 08/05/2015    | 2,759,025.88        | 2,759,025.88        | 2,759,025.88        | 0.090        | 0.088        | 0.090        | 1                              |
| 108906E                              | 10091        | Lone Star Government ON       | 08/05/2019    | 2,757,636.41        | 2,757,636.41        | 2,757,636.41        | 0.010        | 0.009        | 0.010        | 1                              |
| <b>Subtotal and Average</b>          |              |                               |               | <b>5,516,662.29</b> | <b>5,516,662.29</b> | <b>5,516,662.29</b> |              | <b>0.049</b> | <b>0.050</b> | <b>1</b>                       |
| <b>Total Investments and Average</b> |              |                               |               | <b>7,744,456.60</b> | <b>7,744,456.60</b> | <b>7,744,456.60</b> |              | <b>0.038</b> | <b>0.039</b> | <b>1</b>                       |



**Fund QSCB - QSCB - Reserve Fund  
Investments by Fund  
January 31, 2022**

| CUSIP                                   | Investment # | Issuer                     | Purchase Date | Book Value           | Par Value            | Market Value         | Current Rate | YTM 360      | YTM 365      | Maturity Date | Days To Maturity |
|---|--------------|----------------------------|---------------|----------------------|----------------------|----------------------|--------------|--------------|--------------|---------------|------------------|
| <b>BNY Mellon</b>                       |              |                            |               |                      |                      |                      |              |              |              |               |                  |
| 882521                                  | 10014        | BNY Mellon - Cash          | 07/01/2021    | 76,850.63            | 76,850.63            | 76,850.63            |              |              |              |               | 1                |
| <b>Subtotal and Average</b>             |              |                            |               | <b>76,850.63</b>     | <b>76,850.63</b>     | <b>76,850.63</b>     |              | <b>0.000</b> | <b>0.000</b> |               | <b>1</b>         |
| <b>Federal Agency Coupon Securities</b> |              |                            |               |                      |                      |                      |              |              |              |               |                  |
| 3130ANDP2                               | 10144        | FHLB Call Note             | 08/18/2021    | 2,000,000.00         | 2,000,000.00         | 1,982,193.10         | 0.250        | 0.246        | 0.250        | 08/18/2023    | 563              |
| 3130AQJM6                               | 10152        | FHLB Call Note             | 01/28/2022    | 2,996,230.00         | 3,000,000.00         | 2,984,127.51         | 1.250        | 1.276        | 1.294        | 01/28/2025    | 1,092            |
| <b>Subtotal and Average</b>             |              |                            |               | <b>4,996,230.00</b>  | <b>5,000,000.00</b>  | <b>4,966,320.61</b>  |              | <b>0.864</b> | <b>0.876</b> |               | <b>880</b>       |
| <b>Municipal Bonds</b>                  |              |                            |               |                      |                      |                      |              |              |              |               |                  |
| 476637AM5                               | 10139        | Jersey City NJ Redevel Agy | 05/26/2021    | 1,595,973.10         | 1,590,000.00         | 1,594,754.10         | 1.500        | 0.315        | 0.320        | 05/26/2022    | 114              |
| 678720KM4                               | 10146        | Oklahoma County OK ISD     | 09/23/2021    | 2,006,304.30         | 2,000,000.00         | 1,980,380.00         | 0.500        | 0.234        | 0.238        | 09/01/2023    | 577              |
| 73358W4V3                               | 10149        | Port Authority of NY & NJ  | 10/15/2021    | 2,523,471.59         | 2,500,000.00         | 2,494,300.00         | 1.086        | 0.414        | 0.420        | 07/01/2023    | 515              |
| <b>Subtotal and Average</b>             |              |                            |               | <b>6,125,748.99</b>  | <b>6,090,000.00</b>  | <b>6,069,434.10</b>  |              | <b>0.330</b> | <b>0.334</b> |               | <b>430</b>       |
| <b>Total Investments and Average</b>    |              |                            |               | <b>11,198,829.62</b> | <b>11,166,850.63</b> | <b>11,112,605.34</b> |              | <b>0.566</b> | <b>0.574</b> |               | <b>628</b>       |

**Fund QSCBDS - QSCB - Debt Service  
Investments by Fund  
January 31, 2022**

| CUSIP                                | Investment # | Issuer            | Purchase Date | Book Value  | Par Value   | Market Value | Current Rate | YTM 360      | YTM 365      | Maturity Days To Date Maturity |
|--------------------------------------|--------------|-------------------|---------------|-------------|-------------|--------------|--------------|--------------|--------------|--------------------------------|
| <b>BNY Mellon</b>                    |              |                   |               |             |             |              |              |              |              |                                |
| 882520                               | 10040        | BNY Mellon - Cash | 07/01/2021    | 0.00        | 0.00        | 0.00         |              |              |              | 1                              |
| <b>Subtotal and Average</b>          |              |                   |               | <b>0.00</b> | <b>0.00</b> | <b>0.00</b>  |              | <b>0.000</b> | <b>0.000</b> | <b>0</b>                       |
| <b>Total Investments and Average</b> |              |                   |               | <b>0.00</b> | <b>0.00</b> | <b>0.00</b>  |              | <b>0.000</b> | <b>0.000</b> | <b>0</b>                       |

**McAllen ISD**  
**Cash Reconciliation Report**  
**For the Period January 1, 2022 - January 31, 2022**  
**Grouped by Fund**

| Trans. Date                | Investment # | Fund | Trans. Type | Security ID | Par Value    | Security Description             | Maturity Date | Purchases            | Interest         | Redemptions | Cash                 |
|----------------------------|--------------|------|-------------|-------------|--------------|----------------------------------|---------------|----------------------|------------------|-------------|----------------------|
| <b>General Fund</b>        |              |      |             |             |              |                                  |               |                      |                  |             |                      |
| 01/01/2022                 | 10148        | GEN  | Interest    | 73358W4V3   | 1,505,000.00 | PORTNW 1.5M 1.09% Mat.           | 07/01/2023    | 0.00                 | 8,172.15         | 0.00        | 8,172.15             |
| <b>Subtotal</b>            |              |      |             |             |              |                                  |               | <b>0.00</b>          | <b>8,172.15</b>  | <b>0.00</b> | <b>8,172.15</b>      |
| <b>QSCB - Reserve Fund</b> |              |      |             |             |              |                                  |               |                      |                  |             |                      |
| 01/01/2022                 | 10149        | QSCB | Interest    | 73358W4V3   | 2,500,000.00 | PORTNW 2.5M 1.09% Mat.           | 07/01/2023    | 0.00                 | 13,575.00        | 0.00        | 13,575.00            |
| 01/28/2022                 | 10152        | QSCB | Purchase    | 3130AQJM6   | 3,000,000.00 | FHLBC 3.0M 1.25% Mat. 01/28/2025 | 01/28/2025    | -2,996,100.00        | 0.00             | 0.00        | -2,996,100.00        |
| <b>Subtotal</b>            |              |      |             |             |              |                                  |               | <b>-2,996,100.00</b> | <b>13,575.00</b> | <b>0.00</b> | <b>-2,982,525.00</b> |
| <b>Total</b>               |              |      |             |             |              |                                  |               | <b>-2,996,100.00</b> | <b>21,747.15</b> | <b>0.00</b> | <b>-2,974,352.85</b> |

**McAllen ISD**  
**Purchases Report**  
**Sorted by Fund - Fund**  
**January 1, 2022 - January 31, 2022**

Patterson & Associates  
 901 S. MoPac  
 Suite 195  
 Austin, TX 78746  
 -

| CUSIP                      | Investment # | Fund | Sec. Type | Issuer                 | Original Par Value  | Purchase Date | Payment Periods | Principal Purchased | Accrued Interest at Purchase | Rate at Purchase | Maturity Date | YTM   | Ending Book Value   |
|----------------------------|--------------|------|-----------|------------------------|---------------------|---------------|-----------------|---------------------|------------------------------|------------------|---------------|-------|---------------------|
| <b>QSCB - Reserve Fund</b> |              |      |           |                        |                     |               |                 |                     |                              |                  |               |       |                     |
| 3130AQM6                   | 10152        | QSCB | FAC       | FHLBC                  | 3,000,000.00        | 01/28/2022    | 07/28 - 01/28   | 2,996,100.00        |                              | 1.250            | 01/28/2025    | 1.294 | 2,996,230.00        |
|                            |              |      |           | <b>Subtotal</b>        | <b>3,000,000.00</b> |               |                 | <b>2,996,100.00</b> | <b>0.00</b>                  |                  |               |       | <b>2,996,230.00</b> |
|                            |              |      |           | <b>Total Purchases</b> | <b>3,000,000.00</b> |               |                 | <b>2,996,100.00</b> | <b>0.00</b>                  |                  |               |       | <b>2,996,230.00</b> |

**McAllen ISD**  
**Interest Earnings**  
**Sorted by Fund - Fund**  
**January 1, 2022 - January 31, 2022**  
**Yield on Average Book Value**

| CUSIP                              | Investment # | Fund  | Security Type   | Ending Par Value     | Beginning Book Value | Average Book Value   | Maturity Date | Current Rate | Annualized Yield | Adjusted Interest Earnings |                         |                            |
|------------------------------------|--------------|-------|-----------------|----------------------|----------------------|----------------------|---------------|--------------|------------------|----------------------------|-------------------------|----------------------------|
|                                    |              |       |                 |                      |                      |                      |               |              |                  | Interest Earned            | Amortization/ Accretion | Adjusted Interest Earnings |
| <b>Fund: Activity Fund</b>         |              |       |                 |                      |                      |                      |               |              |                  |                            |                         |                            |
| 999915                             | 10020        | ACT   | LA2             | 1,799,046.04         | 1,849,190.36         | 1,847,573.26         |               | 0.010        | 0.009            | 13.93                      | 0.00                    | 13.93                      |
|                                    |              |       | <b>Subtotal</b> | <b>1,799,046.04</b>  | <b>1,849,190.36</b>  | <b>1,847,573.26</b>  |               |              | <b>0.009</b>     | <b>13.93</b>               | <b>0.00</b>             | <b>13.93</b>               |
| <b>Fund: Clearing Fund</b>         |              |       |                 |                      |                      |                      |               |              |                  |                            |                         |                            |
| 999914                             | 10019        | CLEAR | LA2             | 5,268,744.77         | 3,805,316.10         | 3,852,524.84         |               | 0.010        | 0.010            | 33.69                      | 0.00                    | 33.69                      |
|                                    |              |       | <b>Subtotal</b> | <b>5,268,744.77</b>  | <b>3,805,316.10</b>  | <b>3,852,524.84</b>  |               |              | <b>0.010</b>     | <b>33.69</b>               | <b>0.00</b>             | <b>33.69</b>               |
| <b>Fund: Capital Projects Fund</b> |              |       |                 |                      |                      |                      |               |              |                  |                            |                         |                            |
| 108906I                            | 10108        | CP    | RR2             | 8,365,300.36         | 9,164,610.07         | 8,858,180.72         |               | 0.090        | 0.092            | 690.29                     | 0.00                    | 690.29                     |
| 108906G                            | 10101        | CP    | RR2             | 1,227,300.60         | 1,327,198.86         | 1,304,621.50         |               | 0.090        | 0.092            | 101.74                     | 0.00                    | 101.74                     |
| 999922                             | 10103        | CP    | LA2             | 95,887.56            | 166,840.97           | 132,273.86           |               | 0.010        | 0.009            | 1.01                       | 0.00                    | 1.01                       |
| SYS10109                           | 10109        | CP    | LA2             | 124,391.61           | 21,937.31            | 82,369.16            |               | 0.010        | 0.009            | 0.63                       | 0.00                    | 0.63                       |
| 108906H                            | 10102        | CP    | RR2             | 1,313,950.84         | 1,313,942.38         | 1,313,942.65         |               | 0.010        | 0.008            | 8.46                       | 0.00                    | 8.46                       |
| 108906J                            | 10113        | CP    | RR2             | 6,463,252.26         | 6,463,210.64         | 6,463,211.98         |               | 0.010        | 0.008            | 41.62                      | 0.00                    | 41.62                      |
|                                    |              |       | <b>Subtotal</b> | <b>17,590,083.23</b> | <b>18,457,740.23</b> | <b>18,154,599.88</b> |               |              | <b>0.055</b>     | <b>843.75</b>              | <b>0.00</b>             | <b>843.75</b>              |
| <b>Fund: Debt Service Fund</b>     |              |       |                 |                      |                      |                      |               |              |                  |                            |                         |                            |
| 108906B                            | 10032        | DS    | RR2             | 5,478,783.44         | 3,026,443.68         | 4,330,952.90         |               | 0.090        | 0.094            | 344.12                     | 0.00                    | 344.12                     |
| 999918                             | 10023        | DS    | LA2             | 5,434.75             | 4,453.24             | 5,013.60             |               | 0.010        | 0.009            | 0.04                       | 0.00                    | 0.04                       |
| 108906C                            | 10089        | DS    | RR2             | 797,752.74           | 797,747.60           | 797,747.77           |               | 0.010        | 0.008            | 5.14                       | 0.00                    | 5.14                       |
|                                    |              |       | <b>Subtotal</b> | <b>6,281,970.93</b>  | <b>3,828,644.52</b>  | <b>5,133,714.26</b>  |               |              | <b>0.080</b>     | <b>349.30</b>              | <b>0.00</b>             | <b>349.30</b>              |
| <b>Fund: General Fund</b>          |              |       |                 |                      |                      |                      |               |              |                  |                            |                         |                            |
| 999921                             | 10092        | GEN   | RRP             | 10,562,116.72        | 10,561,779.73        | 10,561,790.60        |               | 0.038        | 0.038            | 336.99                     | 0.00                    | 336.99                     |
| 108906                             | 10003        | GEN   | RR2             | 56,440,914.01        | 39,374,455.24        | 48,621,401.92        |               | 0.090        | 0.093            | 3,826.60                   | 0.00                    | 3,826.60                   |
| 999917                             | 10022        | GEN   | LA2             | 5,043,173.30         | 7,504,267.58         | 7,424,879.11         |               | 0.010        | 0.007            | 45.09                      | 0.00                    | 45.09                      |
| 999920                             | 10034        | GEN   | RRP             | 10,610,553.87        | 10,609,674.80        | 10,609,703.16        |               | 0.098        | 0.098            | 879.07                     | 0.00                    | 879.07                     |
| 3130ANDP2                          | 10143        | GEN   | FAC             | 2,400,000.00         | 2,400,000.00         | 2,400,000.00         | 08/18/2023    | 0.250        | 0.245            | 500.00                     | 0.00                    | 500.00                     |
| 3130APQM0                          | 10150        | GEN   | FAC             | 3,000,000.00         | 3,000,000.00         | 3,000,000.00         | 11/18/2024    | 1.000        | 0.981            | 2,500.00                   | 0.00                    | 2,500.00                   |

**McAllen ISD**  
**Interest Earnings**  
**January 1, 2022 - January 31, 2022**

| CUSIP                            | Investment # | Fund    | Security Type | Ending Par Value      | Beginning Book Value  | Average Book Value    | Maturity Date | Current Rate | Annualized Yield | Adjusted Interest Earnings |                         |                            |
|----------------------------------|--------------|---------|---------------|-----------------------|-----------------------|-----------------------|---------------|--------------|------------------|----------------------------|-------------------------|----------------------------|
|                                  |              |         |               |                       |                       |                       |               |              |                  | Interest Earned            | Amortization/ Accretion | Adjusted Interest Earnings |
| <b>Fund: General Fund</b>        |              |         |               |                       |                       |                       |               |              |                  |                            |                         |                            |
| 3130APQU2                        | 10151        | GEN     | FAC           | 2,000,000.00          | 2,000,000.00          | 2,000,000.00          | 11/22/2023    | 0.650        | 0.638            | 1,083.34                   | 0.00                    | 1,083.34                   |
| 108906D                          | 10090        | GEN     | RR2           | 11,752,356.61         | 11,752,280.93         | 11,752,283.37         |               | 0.010        | 0.008            | 75.68                      | 0.00                    | 75.68                      |
| 64971WJ35                        | 10123        | GEN     | MC2           | 2,500,000.00          | 2,509,956.99          | 2,508,632.07          | 05/01/2022    | 1.650        | 0.445            | 3,437.50                   | -2,489.25               | 948.25                     |
| 476637AM5                        | 10138        | GEN     | MC2           | 2,910,000.00          | 2,923,783.70          | 2,922,265.81          | 05/26/2022    | 1.500        | 0.317            | 3,637.50                   | -2,851.80               | 785.70                     |
| 64990FC93                        | 10140        | GEN     | MC2           | 1,000,000.00          | 1,000,000.00          | 1,000,000.00          | 03/15/2022    | 0.167        | 0.164            | 139.17                     | 0.00                    | 139.17                     |
| 8717027U4                        | 10141        | GEN     | MC2           | 1,580,000.00          | 1,617,823.42          | 1,616,600.84          | 05/15/2023    | 2.000        | 0.245            | 2,633.33                   | -2,296.97               | 336.36                     |
| 953107AB5                        | 10142        | GEN     | MC2           | 1,000,000.00          | 1,000,000.00          | 1,000,000.00          | 07/01/2023    | 0.466        | 0.457            | 388.33                     | 0.00                    | 388.33                     |
| 678720KM4                        | 10145        | GEN     | MC2           | 1,100,000.00          | 1,103,649.86          | 1,103,552.72          | 09/01/2023    | 0.500        | 0.294            | 458.34                     | -182.50                 | 275.84                     |
| 678553AP3                        | 10147        | GEN     | MC2           | 1,000,000.00          | 1,034,376.26          | 1,033,069.33          | 03/01/2023    | 3.204        | 0.245            | 2,670.00                   | -2,455.44               | 214.56                     |
| 73358W4V3                        | 10148        | GEN     | MC2           | 1,505,000.00          | 1,519,961.07          | 1,519,518.67          | 07/01/2023    | 1.086        | 0.411            | 1,362.02                   | -831.17                 | 530.85                     |
| <b>Subtotal</b>                  |              |         |               | <b>114,404,114.51</b> | <b>99,912,009.58</b>  | <b>109,073,697.60</b> |               |              | <b>0.139</b>     | <b>23,972.96</b>           | <b>-11,107.13</b>       | <b>12,865.83</b>           |
| <b>Fund: Plan 457 Fund</b>       |              |         |               |                       |                       |                       |               |              |                  |                            |                         |                            |
| 999916                           | 10021        | PLAN457 | LA2           | 3,386.79              | 6,773.50              | 5,571.75              |               | 0.010        | 0.008            | 0.04                       | 0.00                    | 0.04                       |
| <b>Subtotal</b>                  |              |         |               | <b>3,386.79</b>       | <b>6,773.50</b>       | <b>5,571.75</b>       |               |              | <b>0.008</b>     | <b>0.04</b>                | <b>0.00</b>             | <b>0.04</b>                |
| <b>Fund: Proprietary Fund</b>    |              |         |               |                       |                       |                       |               |              |                  |                            |                         |                            |
| 108906A                          | 10025        | PROP    | RR2           | 2,759,025.88          | 3,358,786.34          | 3,087,826.33          |               | 0.090        | 0.091            | 239.54                     | 0.00                    | 239.54                     |
| 999919                           | 10024        | PROP    | LA2           | 2,227,794.31          | 1,754,140.77          | 1,769,420.23          |               | 0.010        | 0.011            | 17.23                      | 0.00                    | 17.23                      |
| 108906E                          | 10091        | PROP    | RR2           | 2,757,636.41          | 2,757,618.65          | 2,757,619.22          |               | 0.010        | 0.008            | 17.76                      | 0.00                    | 17.76                      |
| <b>Subtotal</b>                  |              |         |               | <b>7,744,456.60</b>   | <b>7,870,545.76</b>   | <b>7,614,865.78</b>   |               |              | <b>0.042</b>     | <b>274.53</b>              | <b>0.00</b>             | <b>274.53</b>              |
| <b>Fund: QSCB - Reserve Fund</b> |              |         |               |                       |                       |                       |               |              |                  |                            |                         |                            |
| 882521                           | 10014        | QSCB    | LA1           | 76,850.63             | 3,059,375.63          | 2,685,481.28          |               |              |                  | 0.00                       | 0.00                    | 0.00                       |
| 3130AQJM6                        | 10152        | QSCB    | FAC           | 3,000,000.00          | 0.00                  | 386,606.13            | 01/28/2025    | 1.250        | 1.348            | 312.50                     | 130.00                  | 442.50                     |
| 3130ANDP2                        | 10144        | QSCB    | FAC           | 2,000,000.00          | 2,000,000.00          | 2,000,000.00          | 08/18/2023    | 0.250        | 0.245            | 416.67                     | 0.00                    | 416.67                     |
| 476637AM5                        | 10139        | QSCB    | MC2           | 1,590,000.00          | 1,597,531.30          | 1,596,701.94          | 05/26/2022    | 1.500        | 0.317            | 1,987.50                   | -1,558.20               | 429.30                     |
| 678720KM4                        | 10146        | QSCB    | MC2           | 2,000,000.00          | 2,006,636.10          | 2,006,459.50          | 09/01/2023    | 0.500        | 0.294            | 833.34                     | -331.80                 | 501.54                     |
| 73358W4V3                        | 10149        | QSCB    | MC2           | 2,500,000.00          | 2,524,852.27          | 2,524,117.39          | 07/01/2023    | 1.086        | 0.411            | 2,262.50                   | -1,380.68               | 881.82                     |
| <b>Subtotal</b>                  |              |         |               | <b>11,166,850.63</b>  | <b>11,188,395.30</b>  | <b>11,199,366.23</b>  |               |              | <b>0.281</b>     | <b>5,812.51</b>            | <b>-3,140.68</b>        | <b>2,671.83</b>            |
| <b>Total</b>                     |              |         |               | <b>164,258,653.50</b> | <b>146,918,615.35</b> | <b>156,881,913.61</b> |               |              | <b>0.128</b>     | <b>31,300.71</b>           | <b>-14,247.81</b>       | <b>17,052.90</b>           |

**McAllen ISD**  
**Amortization Schedule**  
**January 1, 2022 - January 31, 2022**  
**Sorted By Fund - Fund**

| Investment #               | Maturity Date                | Beginning Par Value |                 |                      |                              | Amounts Amortized    |                                  |                              |                                  |                                       |
|----------------------------|------------------------------|---------------------|-----------------|----------------------|------------------------------|----------------------|----------------------------------|------------------------------|----------------------------------|---------------------------------------|
| Issuer                     | Fund                         | Amort. Date         | Current Rate    | Purchase Principal   | Original Premium or Discount | Ending Book Value    | And Unamortized As of 01/01/2022 | Amount Amortized This Period | Amt Amortized Through 01/31/2022 | Amount Unamortized Through 01/31/2022 |
| <b>General Fund</b>        |                              |                     |                 |                      |                              |                      |                                  |                              |                                  |                                       |
| 10138                      | GEN                          | 05/26/2022          | 2,910,000.00    | 2,944,221.60         | 34,221.60                    | 2,920,931.90         | -20,437.90                       | -2,851.80                    | -23,289.70                       | 10,931.90                             |
|                            | Jersey City NJ Redev Agy     |                     | 1.500           |                      |                              |                      | 13,783.70                        |                              |                                  |                                       |
| 10123                      | GEN                          | 05/01/2022          | 2,500,000.00    | 2,546,300.00         | 46,300.00                    | 2,507,467.74         | -36,343.01                       | -2,489.25                    | -38,832.26                       | 7,467.74                              |
|                            | NYC Trans Finance Auth       |                     | 1.650           |                      |                              |                      | 9,956.99                         |                              |                                  |                                       |
| 10145                      | GEN                          | 09/01/2023          | 1,100,000.00    | 1,104,246.00         | 4,246.00                     | 1,103,467.36         | -596.14                          | -182.50                      | -778.64                          | 3,467.36                              |
|                            | Oklahoma County OK ISD       |                     | 0.500           |                      |                              |                      | 3,649.86                         |                              |                                  |                                       |
| 10147                      | GEN                          | 03/01/2023          | 1,000,000.00    | 1,042,070.00         | 42,070.00                    | 1,031,920.82         | -7,693.74                        | -2,455.44                    | -10,149.18                       | 31,920.82                             |
|                            | Oklahoma City Econ Dev Trust |                     | 3.204           |                      |                              |                      | 34,376.26                        |                              |                                  |                                       |
| 10148                      | GEN                          | 07/01/2023          | 1,505,000.00    | 1,522,066.70         | 17,066.70                    | 1,519,129.90         | -2,105.63                        | -831.17                      | -2,936.80                        | 14,129.90                             |
|                            | Port Authority of NY & NJ    |                     | 1.086           |                      |                              |                      | 14,961.07                        |                              |                                  |                                       |
| 10141                      | GEN                          | 05/15/2023          | 1,580,000.00    | 1,631,681.80         | 51,681.80                    | 1,615,526.45         | -13,858.38                       | -2,296.97                    | -16,155.35                       | 35,526.45                             |
|                            | Syracuse NY                  |                     | 2.000           |                      |                              |                      | 37,823.42                        |                              |                                  |                                       |
|                            |                              |                     | <b>Subtotal</b> | <b>10,790,586.10</b> | <b>195,586.10</b>            | <b>10,698,444.17</b> | <b>-81,034.80</b>                | <b>-11,107.13</b>            | <b>-92,141.93</b>                | <b>103,444.17</b>                     |
|                            |                              |                     |                 |                      |                              |                      | <b>114,551.30</b>                |                              |                                  |                                       |
| <b>QSCB - Reserve Fund</b> |                              |                     |                 |                      |                              |                      |                                  |                              |                                  |                                       |
| 10152                      | QSCB                         | 01/28/2025          | 3,000,000.00    | 2,996,100.00         | -3,900.00                    | 2,996,230.00         | 0.00                             | 130.00                       | 130.00                           | -3,770.00                             |
|                            | FHLB Call Note               | 04/28/2022          | 1.250           |                      |                              |                      | -3,900.00                        |                              |                                  |                                       |
| 10139                      | QSCB                         | 05/26/2022          | 1,590,000.00    | 1,608,698.40         | 18,698.40                    | 1,595,973.10         | -11,167.10                       | -1,558.20                    | -12,725.30                       | 5,973.10                              |
|                            | Jersey City NJ Redev Agy     |                     | 1.500           |                      |                              |                      | 7,531.30                         |                              |                                  |                                       |
| 10146                      | QSCB                         | 09/01/2023          | 2,000,000.00    | 2,007,720.00         | 7,720.00                     | 2,006,304.30         | -1,083.90                        | -331.80                      | -1,415.70                        | 6,304.30                              |
|                            | Oklahoma County OK ISD       |                     | 0.500           |                      |                              |                      | 6,636.10                         |                              |                                  |                                       |
| 10149                      | QSCB                         | 07/01/2023          | 2,500,000.00    | 2,528,350.00         | 28,350.00                    | 2,523,471.59         | -3,497.73                        | -1,380.68                    | -4,878.41                        | 23,471.59                             |
|                            | Port Authority of NY & NJ    |                     | 1.086           |                      |                              |                      | 24,852.27                        |                              |                                  |                                       |
|                            |                              |                     | <b>Subtotal</b> | <b>9,140,868.40</b>  | <b>50,868.40</b>             | <b>9,121,978.99</b>  | <b>-15,748.73</b>                | <b>-3,140.68</b>             | <b>-18,889.41</b>                | <b>31,978.99</b>                      |
|                            |                              |                     |                 |                      |                              |                      | <b>35,119.67</b>                 |                              |                                  |                                       |
|                            |                              |                     | <b>Total</b>    | <b>19,931,454.50</b> | <b>246,454.50</b>            | <b>19,820,423.16</b> | <b>-96,783.53</b>                | <b>-14,247.81</b>            | <b>-111,031.34</b>               | <b>135,423.16</b>                     |
|                            |                              |                     |                 |                      |                              |                      | <b>149,670.97</b>                |                              |                                  |                                       |



**McAllen ISD**  
**Projected Cashflow Report**  
**Sorted by Fund**  
**For the Period February 1, 2022 - August 31, 2022**

| Projected<br>Trans. Date             | Investment # | Fund | Security ID | Transaction<br>Type | Issuer                       | Par Value            | Original Cost        | Principal            | Interest          | Total                |
|--------------------------------------|--------------|------|-------------|---------------------|------------------------------|----------------------|----------------------|----------------------|-------------------|----------------------|
| <b>General Fund</b>                  |              |      |             |                     |                              |                      |                      |                      |                   |                      |
| 02/18/2022                           | 10143        | GEN  | 3130ANDP2   | Interest            | FHLB Call Note               | 0.00                 | 0.00                 | 0.00                 | 3,000.00          | 3,000.00             |
| 02/18/2022                           | 10143        | GEN  | 3130ANDP2   | Call                | FHLB Call Note               | 2,400,000.00         | 2,400,000.00         | 2,400,000.00         | 0.00              | 2,400,000.00         |
| 02/18/2022                           | 10150        | GEN  | 3130APQM0   | Call                | FHLB Call Note               | 3,000,000.00         | 3,000,000.00         | 3,000,000.00         | 0.00              | 3,000,000.00         |
| 02/22/2022                           | 10151        | GEN  | 3130APQU2   | Call                | FHLB Call Note               | 2,000,000.00         | 2,000,000.00         | 2,000,000.00         | 0.00              | 2,000,000.00         |
| 03/01/2022                           | 10147        | GEN  | 678553AP3   | Interest            | Oklahoma City Econ Dev Trust | 0.00                 | 0.00                 | 0.00                 | 16,020.00         | 16,020.00            |
| 03/15/2022                           | 10140        | GEN  | 64990FC93   | Maturity            | NY State Dorm Authority      | 1,000,000.00         | 1,000,000.00         | 1,000,000.00         | 1,215.39          | 1,001,215.39         |
| 05/01/2022                           | 10123        | GEN  | 64971WJ35   | Maturity            | NYC Trans Finance Auth       | 2,500,000.00         | 2,546,300.00         | 2,500,000.00         | 20,625.00         | 2,520,625.00         |
| 05/15/2022                           | 10141        | GEN  | 8717027U4   | Interest            | Syracuse NY                  | 0.00                 | 0.00                 | 0.00                 | 27,650.00         | 27,650.00            |
| 05/18/2022                           | 10150        | GEN  | 3130APQM0   | Interest            | FHLB Call Note               | 0.00                 | 0.00                 | 0.00                 | 15,000.00         | 15,000.00            |
| 05/22/2022                           | 10151        | GEN  | 3130APQU2   | Interest            | FHLB Call Note               | 0.00                 | 0.00                 | 0.00                 | 6,500.00          | 6,500.00             |
| 05/26/2022                           | 10138        | GEN  | 476637AM5   | Maturity            | Jersey City NJ Redevelop Agy | 2,910,000.00         | 2,944,221.60         | 2,910,000.00         | 43,650.00         | 2,953,650.00         |
| 07/01/2022                           | 10142        | GEN  | 953107AB5   | Interest            | West Hartford CT             | 0.00                 | 0.00                 | 0.00                 | 4,569.39          | 4,569.39             |
| 07/01/2022                           | 10148        | GEN  | 73358W4V3   | Interest            | Port Authority of NY & NJ    | 0.00                 | 0.00                 | 0.00                 | 8,172.15          | 8,172.15             |
| 08/18/2022                           | 10143        | GEN  | 3130ANDP2   | Interest            | FHLB Call Note               | 0.00                 | 0.00                 | 0.00                 | 3,000.00          | 3,000.00             |
| <b>Total for General Fund</b>        |              |      |             |                     |                              | <b>13,810,000.00</b> | <b>13,890,521.60</b> | <b>13,810,000.00</b> | <b>149,401.93</b> | <b>13,959,401.93</b> |
| <b>QSCB - Reserve Fund</b>           |              |      |             |                     |                              |                      |                      |                      |                   |                      |
| 02/18/2022                           | 10144        | QSCB | 3130ANDP2   | Interest            | FHLB Call Note               | 0.00                 | 0.00                 | 0.00                 | 2,500.00          | 2,500.00             |
| 02/18/2022                           | 10144        | QSCB | 3130ANDP2   | Call                | FHLB Call Note               | 2,000,000.00         | 2,000,000.00         | 2,000,000.00         | 0.00              | 2,000,000.00         |
| 04/28/2022                           | 10152        | QSCB | 3130AQJM6   | Call                | FHLB Call Note               | 3,000,000.00         | 2,996,100.00         | 3,000,000.00         | 0.00              | 3,000,000.00         |
| 05/26/2022                           | 10139        | QSCB | 476637AM5   | Maturity            | Jersey City NJ Redevelop Agy | 1,590,000.00         | 1,608,698.40         | 1,590,000.00         | 23,850.00         | 1,613,850.00         |
| 07/01/2022                           | 10149        | QSCB | 73358W4V3   | Interest            | Port Authority of NY & NJ    | 0.00                 | 0.00                 | 0.00                 | 13,575.00         | 13,575.00            |
| 07/28/2022                           | 10152        | QSCB | 3130AQJM6   | Interest            | FHLB Call Note               | 0.00                 | 0.00                 | 0.00                 | 18,750.00         | 18,750.00            |
| 08/18/2022                           | 10144        | QSCB | 3130ANDP2   | Interest            | FHLB Call Note               | 0.00                 | 0.00                 | 0.00                 | 2,500.00          | 2,500.00             |
| <b>Total for QSCB - Reserve Fund</b> |              |      |             |                     |                              | <b>6,590,000.00</b>  | <b>6,604,798.40</b>  | <b>6,590,000.00</b>  | <b>61,175.00</b>  | <b>6,651,175.00</b>  |
| <b>GRAND TOTALS:</b>                 |              |      |             |                     |                              | <b>20,400,000.00</b> | <b>20,495,320.00</b> | <b>20,400,000.00</b> | <b>210,576.93</b> | <b>20,610,576.93</b> |



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**Patterson & Associates**  
Barton Oaks Plaza  
Building II  
901 S. MoPac, Suite 195  
Austin, TX 78746  
800.817.2442

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** *Lilia Sandoval Silva*

**SUPERVISOR:** *Rosalba De Hoyos*

**Approved for presentation to the Board of Education:**

*J. X. O'Connell*

70  
**Superintendent of Schools**

### RECOMMENDED VENDORS

Request for Proposal No. 2021-1007

Career & Technology Materials, Supplies, Equipment, & Related Services Discount-from-List  
(Round 10)

| No. | Vendor Name   | City       | State | Recommendation |
|-----|---|------------|-------|----------------|
| 1   | eDynamic Holdings LP  | Southlake  | TX    | Qualified      |
| 2   | Follett School Solutions, LLC.  | McHenry    | IL    | Qualified      |
| 3   | NOCTI   | Big Rapids | MI    | Qualified      |
| 4   | Realityworks, Inc.  | Eau Claire | WI    | Qualified      |
| 5   | Textbook Warehouse, LLC   | Alpharetta | GA    | Qualified      |
| 6   | VWR Funding, Inc.<br>DE VWR International, LLC<br>dba Ward's Science<br>dba Sargent Welch Brand | Rochester  | NY    | Qualified      |

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** *Jenny Ann Vega*

**SUPERVISOR:** *Rosalba De Hoyos*

**Approved for presentation to the Board of Education:**

*J. X. O'Connell*

72  
**Superintendent of Schools**

2021-1000 R

RFP 2021-1000R Library Books, Textbooks, Audiovisual Materials and Instructional Reading Materials  
Discount-from-List (Round 12)

| No. | Responding Supplier                          | City       | State | Recommendation |
|-----|--|------------|-------|----------------|
| 1   | Evan-Moor Educational Publishers             | Monterey   | CA    | Qualified      |
| 2   | Great Minds PBC                              | Washington | DC    | Qualified      |
| 3   | Houghton Mifflin Harcourt Publishing Company | Geneva     | IL    | Qualified      |
| 4   | J.W. Pepper & Son, Inc.                      | Exton      | PA    | Qualified      |
| 5   | Knowsys Educational Services, LLC            | La Ward    | TX    | Qualified      |
| 6   | Scholastic Inc.                              | New York   | NY    | Qualified      |

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

*Alexandra Dominguez*  
**SUBMITTED BY:** \_\_\_\_\_

*Rosalba De Hoyos*  
**SUPERVISOR:** \_\_\_\_\_

**Approved for presentation to the Board of Education:**

*J. X. Gonzalez*

74 \_\_\_\_\_  
**Superintendent of Schools**

2021-1005

RFP – Professional Development, Site Licenses, Supplemental Materials, and Other Related Products and Services (Round 11)

| No. | Responding Supplier   | City          | State | Recommendation |
|-----|---|---------------|-------|----------------|
| 1   | Association for Supervision & Curriculum Development dba ASCD | Alexandria    | VA    | Qualified      |
| 2   | AVID Center   | San Diego     | CA    | Qualified      |
| 3   | Bilingual Dictionaries, Inc.                                  | Murrieta      | CA    | Qualified      |
| 4   | Briton Education LLC dba Insights to Behavior                 | Oklahoma City | OK    | Qualified      |
| 5   | College Board   | New York      | NY    | Qualified      |
| 6   | EdTech Games, LLC   | Provo         | UT    | Qualified      |
| 7   | eDynamic Holdings LP  | Southlake     | TX    | Qualified      |
| 8   | Empowering Writers, LLC                                       | Monroe        | CT    | Qualified      |
| 9   | Express Booksellers, LLC                                      | Dallas        | TX    | Qualified      |
| 10  | Great Minds PBC   | Washington    | DC    | Qualified      |
| 11  | James Phillips Williams Memorial Foundation                   | San Angelo    | TX    | Qualified      |
| 12  | KinderLab Robotics, Inc                                       | Waltham       | MA    | Qualified      |
| 13  | Knowsys Educational Services, LLC                             | La Ward       | TX    | Qualified      |
| 14  | MindRise Learning, LLC  | Driftwood     | TX    | Qualified      |
| 15  | Nearpod Inc   | Dania Beach   | FL    | Qualified      |
| 16  | Nerdvana STEAM Edu LLC  | Edinburg      | TX    | Qualified      |
| 17  | Seesaw Learning, Inc  | San Francisco | CA    | Qualified      |
| 18  | Waterford Research Institute                                  | Taylorsville  | UT    | Qualified      |
| 19  | Wiley Edu, LLC  | Maitland      | FL    | Qualified      |

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



**76** \_\_\_\_\_  
**Superintendent of Schools**



# AIA<sup>®</sup> Document A101<sup>™</sup> – 2017

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

**AGREEMENT** made as of the  day of  in the year 202<sub>\_\_</sub>  
*(In words, indicate day, month and year.)*

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

McALLEN INDEPENDENT SCHOOL DISTRICT  
2000 North 23<sup>rd</sup> Street  
McAllen, Texas 78501

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

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

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

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

The parties should complete A101<sup>™</sup>-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201<sup>™</sup>-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), all sections of the Project Manual, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

**§ 3.3 Substantial Completion**

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute and achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information.)

Not later than  (  ) calendar days from the date of commencement of the Work.

By the following date:

Final Completion shall be 30 calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

| Portion of Work      | Substantial Completion Date |
|----------------------|-----------------------------|
| <input type="text"/> | <input type="text"/>        |

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be  (\$  ), subject to additions and deductions as provided in the Contract Documents. The Contract Sum consists of two portions, the budgeted amount of  Dollars and  Cents (\$  ) and a contingency of  Dollars (\$  ) as specified in Section 4.3 below. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Contractor acknowledges and agrees that the contingency portion of the Contract Sum set forth in Section 4.3 shall not be due or payable unless and to the extent that Owner authorizes such expenditure in writing. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

**§ 4.2 Alternates**

§ 4.2.1 Alternates, if any, included in the Contract Sum:

| Item                 | Price                |
|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> |

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

| Item                 | Price                | Conditions for Acceptance |
|----------------------|----------------------|---------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/>      |

§ 4.3 Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

| Item        | Price                   |
|-------------|-------------------------|
| Contingency | \$ <input type="text"/> |

§ 4.4 Unit prices, if any:

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

[Unit prices for certain components are specified in the bidding form attached hereto as part of Exhibit B. Such prices are only applicable in the event Owner opts to increase or decrease the number of required components.]

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

§ 4.5 Liquidated damages, if any:  
(Insert terms and conditions for liquidated damages, if any.)

§ 4.5.1 **Substantial Completion.** Owner and Contractor recognize that time is of the essence in this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in Article 3, plus any extension thereof in accordance with Article 8 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner [ ] Dollars and Zero Cents (\$[ ].00) per calendar day for each day after the Substantial Completion date noted in Article 3 until the Work is substantially complete.

§ 4.5.2 **Final Completion.** In addition, timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Work within 30 calendar days of the Substantial Completion date (subject to adjustment of such date in accordance with the terms hereof). It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Contractor's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Contractor and Owner also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner [ ] Dollars and Zero Cents (\$[ ].00) per calendar day for each day after the Final Completion date noted in Article 3 until the Work is substantially complete.

§ 4.5.3 *It is expressly understood that the said sum per day set forth in this Section 4.5 is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty.* It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from any Payment made to the Contractor any sums due from Contractor to Owner pursuant to Section 4.5 above.

§ 4.6 Other:  
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 4.6.1 **Commitment of Current Revenues Only.** In the event that during any term hereof, the governing body of any local government party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each government party hereto pursuant to the provisions of Texas Local Government Code §271.903.

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the fifth day following approval by the Board of Trustees or as otherwise required by applicable law .  
*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum less any unused Owner's contingency among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner and the Architect may require. This schedule of values, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

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

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified to the extent approved by the Owner in writing, as provided in Section 7.3.9 of AIA Document A201.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201 or amounts certified by the Architect and disputed by the Owner; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### **§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner shall withhold the following amount, as retainage, from the payment otherwise due:  
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five percent (5%) if the amount set forth in Section 4.1 above for the Contract Sum is at least Four Hundred Thousand Dollars (\$400,000.00) and ten percent (10%) if such amount is less than Four Hundred Thousand Dollars (\$400,000.00).

*(Paragraphs deleted)*

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

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

None.

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

Retainage on any incomplete Work and Unsettled claims.

*(Paragraph deleted)*

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

**§ 5.1.10** If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

**§ 5.1.11** If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claim.

## **§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum minus disputed sums, authorized deductions and liquidated damages, shall be made by the Owner to the Contractor after

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;
- .3 the Contractor has provided the following documents:
  - .1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;
  - .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](http://www.tea.state.tx.us/school.finance/facilities/cert_2004.pdf);
  - .4 Contractor's warranties, organized as required elsewhere in the Contract Documents;
  - .5 Maintenance and Instruction Manuals;
  - .6 Owner's Final Completion Certificate; and
  - .7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the



Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes;

- .4 a final Certificate for Payment has been issued by the Architect; and
- .5 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, and upon acceptance by the Owner and Architect, and after satisfactory evidence has been given by the Contractor that all of the Contractor's bills have been paid and the entire Project is free from liens.

**§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest pursuant to Texas Government Code §2251.025. *(Insert rate of interest agreed upon, if any.)*

%

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*



**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201, the method of binding dispute resolution shall be as follows: *(Check the appropriate box.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201.

*(Paragraphs deleted)*

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** All references to AIA Document A201-2017, AIA Document A201-2007, AIA Document A201 or the A201, shall mean to the modified A201-2007 attached hereto as Exhibit "A". Similarly, references to AIA Document A101-2017, AIA Document A101-2007 or to the A101 shall mean to this A101-2017. Where reference is made in this

Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:  
*(Name, address, email address, and other information)*

Mr. Ruben Trevino  
McAllen Independent School District  
20000 N. 23<sup>rd</sup> St.  
McAllen, TX 78501-6126

**§ 8.3** The Contractor's representative:  
*(Name, address, email address, and other information)*



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

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Contractor shall purchase and maintain insurance as set forth in Article II of the AIA Document A201. The Contractor's insurance certificates are attached hereto as Exhibit "D".

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A201. The original bonds required pursuant to Section 11.4 of the A201 and this Section 8.5 are attached to the Owner's execution original of this Agreement as Exhibit "C" with a copy of the bonds attached as Exhibit "C" to the Contractor's execution original.

*(Paragraphs deleted)*

**§ 8.7** Other provisions:

**§ 8.7.1** The Agreement 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 shall be in Hidalgo County, Texas.

**§ 8.7.2** As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.

**§ 8.7.3** 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. As part of that responsibility, 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.

**§ 8.7.4** Contractor acknowledges that the Owner retained the party set forth above under "Architect" above to provide certain design, contract administration and/or other services for the Project, and may not have used an AIA document for the contract with such party. All references in the Contract Documents to the Architect shall be to the entity named on the first page as the "Architect". The parties acknowledge and agree that, notwithstanding any other provision in the Contract Documents, the Owner is not obligated to retain an architect for the Project and the Owner makes no representations about the party set forth above under "Architect" being an architect.



§ 8.7.5 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to 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 full name in a typeface large enough to be seen from a reasonable distance.

§ 8.7.6 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. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 8.7.7 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 of Owner.

§ 8.7.8 The Contractor may not assign its responsibilities, duties, obligations and rights under this Agreement, without the express written consent of the Owner. This does not prevent Contractor from engaging subcontractors to perform various phases of the Project, but Contractor shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 8.7.9 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

§ 8.7.10 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

§ 8.7.11 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by Contractor of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Owner of any of the covenants, conditions or agreements hereof to be performed by Contractor shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 8.7.12 Contractor stipulates that Owner is a political subdivision of the State of the Texas, and, as such, enjoys immunities from suit and liability as provided by the constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law.

§ 8.7.13 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract.

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

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 This executed AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™–2007, General Conditions of the Contract for Construction

*(Paragraphs deleted)*

(as modified and attached hereto as Exhibit "A")

(Paragraph deleted)

.3 Drawings attached hereto as part of Exhibit "E".

| Number | Title | Date |
|--------|-------|------|
|        |       |      |

.4 Specifications attached hereto as part of Exhibit "E".

| Section | Title | Date | Pages |
|---------|-------|------|-------|
|         |       |      |       |

.5 Addenda, if any:

| Number | Date | Pages |
|--------|------|-------|
|        |      |       |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.6 The following Exhibits, which are attached hereto:

- .1 Exhibit A The modified AIA Document A201–2007, General Conditions of the Contract for Construction.
- .2 Exhibit B Contractor’s Proposal
- .3 Exhibits C Payment and Performance Bonds
- .4 Exhibit D Contractor’s Insurance Certificates
- .5 Exhibit E Plans and Specifications

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

**OWNER:**

**CONTRACTOR:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

[ ]

By: \_\_\_\_\_

By: \_\_\_\_\_

Printer Name:

Title:

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_

Stephen L. Crain

EXHIBIT A

to

*(Paragraph deleted)*

Agreement dated [                      , 20    ], between  
McAllen Independent School District and [                      ]  
(CSP 20\_\_-\_\_ [                      ])

Modified AIA Document A201-2007 General Conditions of the Contract for Construction



EXHIBIT B

to

Agreement dated [                      , 20    ], between  
McAllen Independent School District and [                      ]  
(CSP 20\_\_-\_\_ [                      ])  
Contractor's Proposal



EXHIBIT C

to

*(Table deleted)*

Agreement dated [                      , 20    ], between  
McAllen Independent School District and [                      ]  
(CSP 20\_\_-\_\_ [                      ])

Payment Bond

and

Performance Bond



(Table deleted)

EXHIBIT D

to

Agreement dated [                      , 20    ], between  
McAllen Independent School District and [                      ]  
(CSP 20\_\_-\_\_ [                      ])

Contractor's Insurance Certificates

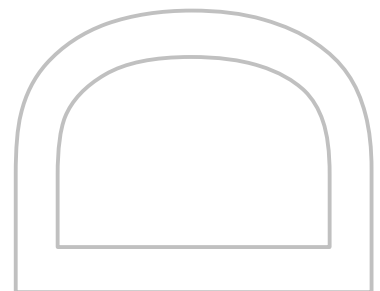
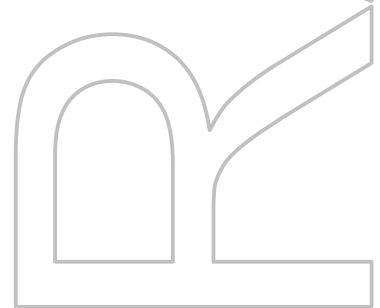
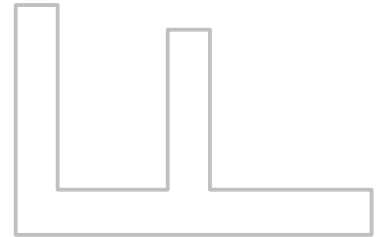
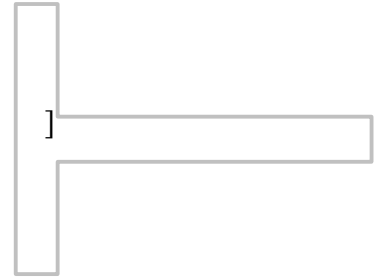


EXHIBIT E

to

Agreement dated [ , 20 ], between  
McAllen Independent School District and [ ]  
(CSP 20\_\_-\_\_ [ ])

Plans and/or Specifications

*(Table deleted)*



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

### THE OWNER:

(Name, legal status and address)

McALLEN INDEPENDENT SCHOOL DISTRICT  
2000 North 23<sup>rd</sup> Street  
McAllen, Texas 78501

### THE ARCHITECT:

(Name, legal status and address)

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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.



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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect pursuant to Section 7.4. At the Owner's option, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

**§ 1.1.1.1** Contractor acknowledges and warrants that it has closely examined all the Contract Documents and is unaware of any instance where the documents are not suitable or are insufficient to enable the Contractor to complete the Work in a timely manner for the Contract sum, and that they include all Work, whether or not shown or described, which reasonably may be inferred or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor (except as provided in Sections 5.3 and 5.4 hereof), (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 of the Contractor under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.3.1** The Work shall include the obligation of the Contractor to visit the site of the Project before submitting a proposal. Such site visit shall be for the purpose of familiarizing Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas. It also includes all supplies, skill, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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



### § 1.1.7 INSTRUMENTS OF SERVICE

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

### § 1.1.8 INITIAL DECISION MAKER

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

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves have been referred to Owner and Architect by Contractor prior to the submission of bids and have been clarified by an Addendum issued to all bidders.

If such differences or conflicts were not called to Owner's and Architect's attention prior to submission of bids, Architect shall decide which of the conflicting requirements will govern based upon the following: the most stringent of the requirements will take precedence over the less stringent; the most expensive item will take precedence over the less expensive, and subject to the approval of Owner, Contractor shall perform the Work at no additional cost and/or time to Owner in accordance with the Architect's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable as being necessary to produce the intended results.

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 The Agreement;
- .2 Addenda, with those of later date having precedence over those of earlier date;
- .3 Supplemental Conditions, if any;
- .4 The General Conditions of the Contract for Construction;
- .5 Specifications
- .6 Drawings, in the case of inconsistency between the Drawings and Specifications or within either document, not clarified by Addendum, the better quality or greater quantity of Work shall be included in the Contract Documents. Clarifications of the inconsistency will be accomplished with the Contractor and, if necessary, an appropriate reduction in the contract will be accomplished by Change Order. Figures given on drawings govern scale measurements. Large scale drawings take precedence over small scale drawings. Written words take precedence over numbers. Handwritten documents take precedence over typewritten documents. Existing conditions take precedence over drawings and specifications for dimensions and shall be verified by the Contractor. The Contractor proceeds at his own risk if conflicts or discrepancies are not resolved prior to the execution of the Work.

§ 1.2.1.2 If Work is required in a manner to make it impossible to produce Work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, Contractor shall request in writing an interpretation from Architect before proceeding with the Work. If Contractor fails to make such request, no excuse will thereafter be entertained for failure to carryout Work in the required manner or provide required guarantees, warranties, or bonds, and Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

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

§ 1.5.1 Instruments of Service, including the Drawings, Specifications, and other similar or related documents and copies thereof are furnished to Contractor for the purpose of performing the Work and are, and shall remain, the property of Owner and Owner will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's or Owner's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees of Owner, by majority vote, is the only representative of Owner, 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 of the contractual completion date. The Board shall designate, as appropriate, an authorized representative(s) to act on its behalf during the course of construction. In the event that an emergency changes the scope of the Work before the Board's next regular meeting or in order to facilitate and expedite the timely completion of the Work, the Board's authorized representative(s) may approve construction changes that do not exceed \$5,000.00 in increased costs. Any such changes shall be confirmed in writing between the Contractor and the Board's authorized representative(s) 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.

### § 2.1.2 DELETED.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics and legal limitations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. In connection with the foregoing, Contractor shall be solely responsible for locating (and shall locate prior to performing any Work) all utilities lines, telephone company, cable, sewer lines, water pipes, gas lines, and electrical lines, including without limitation, 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. Under this provision the Architect and Engineer are in no way relieved of their responsibilities outlined in the Contract or other attached contracts for identification of existing conditions.

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

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2 for use on this Project. All costs of reproduction are the responsibility of Contractor.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's or, if applicable landlord's, property by anyone claiming by, through, or under Contractor, or disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3 and any delay resulting from such Work stoppage shall not extend any Milestone Date identified in the Contract for Construction or the required dates of Substantial or Final Completion.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**§ 2.4.1** The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express

authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

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

**§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner in writing any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect and Owner.

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

**§ 3.2.6** The Contractor shall make reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observation of work prior to the Contractor's field superintendent's personal inspection of the work and his determination that the work complies with the Contract Documents.

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

**§ 3.2.8** If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his Warranty, Contractor shall promptly



notify the Architect in writing, providing substantiation for the position. Any necessary changes, including substitutions of materials, may only be accomplished by an appropriate Modification.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

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

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

**§ 3.3.4** Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors, and their agents and employees, and other persons performing portions of the Work under Contract Documents or other arrangements with Contractor.

**§ 3.3.5** Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of Contractor are in addition to Contractor's obligations under other provisions hereunder.

**§ 3.3.6** Contractor shall be responsible for inspection of portion of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.7** Contractor has the responsibility to ensure that all material suppliers and Subcontractors, 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. Contractor shall coordinate its Work with that of all others on the Project, including of construction utilities.

**§ 3.3.8** Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the buildings and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner (s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

**§ 3.3.9** Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper

correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all Work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said Work and the Drawings and Specifications for the Work.

**§ 3.3.10** Any discrepancy or omission in the dimensions or elections shown on the Drawings and Specifications or found in previous Work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the misdescription of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

**§ 3.3.11** Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. Contractor shall be liable for all property damage, including repairs and replacements of the Work and economic losses, which proximately result from the breach of this duty. Contractor shall advise Architect:

- .1 if a specified product deviates from good construction practices;
- .2 if following the Specifications will affect any warranties; or
- .3 any objections which Contractor may have with the Specifications.

Nothing contained in Section 1.1.3 shall alter the responsibilities established in this Section.

### **§ 3.4 LABOR AND MATERIALS**

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

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making requests for substitutions based on Section 3.4.2, Contractor:

- .1 represents that Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that Contractor will provide the same warranty for the substitution that Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation for the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgments as an experienced Contractor to adopt and implement policies and practices designed to avoid Work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Section 8.3 hereof, Contractor shall be liable to Owner for all damages suffered by Owner.

**§ 3.4.4** Materials shall conform to manufacturer's standards in effect at the date of execution of the Agreement and shall be installed in strict accordance with manufacturer's directions. Contractor shall, if required by Owner or Architect, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

**§ 3.4.5** When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents.

**§ 3.4.6** When the manufacturer's name, patent numbers, underwriter's labels, model numbers or similar identifying marks are required, such markings shall be located as inconspicuously as possible.

### **§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of the best 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 faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** ALL WARRANTIES SHALL INCLUDE LABOR AND MATERIALS AND THE MANUFACTURER'S WARRANTY SHALL BE SIGNED BY SUBCONTRACTOR AND COUNTERSIGNED BY CONTRACTOR. ALL WARRANTIES SHALL BE ADDRESSED TO OWNER AND DELIVERED TO ARCHITECT UPON COMPLETION OF THE WORK AND BEFORE OR WITH THE SUBMISSION OF REQUEST FOR FINAL PAYMENT.

**§ 3.5.3** Contractor shall issue in writing to Owner as a condition precedent to final payment a "general warranty" reflecting the terms and conditions of this Section 3.5 for all Work under the Contract.

**§ 3.5.4** The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after final completion of the entire Work unless a longer time is specifically called for in the specifications. The Contractor shall assign all components, equipment and fixture warranties to the Owner and will deliver all manuals to the Owner at the completion of construction.

**§ 3.5.5** Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to Owner.

**§ 3.5.6** Warranties shall become effective on a date established by Owner and Architect in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties.

**§ 3.5.7** If Architect considers it impractical, because of unsuitable test conditions or some other factors, to execute simultaneous final acceptance of all equipment, portions of properly installed and functioning equipment may be certified by Architect for final acceptance, subject to Owner's approval, when that portion of the system is complete and ready for operation as called for under Section 9.8.1.

**§ 3.5.8** Contractor shall warrant for a period of twelve (12) months that the building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Contractor's control. Contractor shall, immediately upon notification by Owner of water penetration, determine the source of water penetration and, at its own expense, do any Work necessary to make the building(s)

watertight. Contractor shall also, at its own expense, repair or replace any other damaged material, finishes, and furnishings, damaged as a result of this water penetration, to return the building(s) to its (their) original condition.

**§3.5.9** In addition to the foregoing stipulations, Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

**§3.5.10** If for any reason Contractor cannot warrant any part of the Work using material or construction methods that have been specified, or shown, it shall notify Owner and Architect in writing before the Contract is signed, giving reasons, together with the name of product and data on a substitution it can warrant.

### **§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

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

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall make application, 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, including without limitation, street openings, sidewalk, and other obstructions, access over public ways and storage necessary for proper execution and which are, legally required at the time bids are received or negotiations concluded.

**§3.7.1.1** 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 and state and local authorities, that require completion of documentation and/or acquisition of all permits for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during construction phase which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

- a. The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.
- b. The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, Inspection Fees and Plan Checking Fees; temporary utility charges, tap charges and water meter charges and any other similar fees assessed by jurisdictional authorities having control over the Project.
- c. The Owner shall pay fees payable to the Texas Department of Licensing and Regulations (TDLR) for document review relative to the Elimination of Architectural Barriers Act and the Architect will submit the documents to the TDLR for review and approval.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work (including, without limitation, the installation of any materials or equipment) that it knows or reasonably should have known would be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the



Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner in writing an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or based on data provided to Contractor and by the Contractor's prior inspections, tests, reviews, and pre-construction services for the Project; or by the Contractors inspections, tests, reviews and pre-construction services that Contractor had the opportunity and obligation to make in connection with the Project but did not do so.

**§ 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, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

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

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness. If a decision is needed to avoid a delay, Contractor shall notify Architect and Owner in writing sufficiently in advance of needed date to allow reasonable time for selections to be made.

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Architect, unless the superintendent leaves the employment of the Contractor. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner or Architects object to any nominated superintendent. Such approval by the Owner shall not be unreasonably withheld.

**§ 3.9.3 DELETED.**

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to Architect with Contractor's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original schedule. If any schedule submitted sets such a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to Architect and Owner for their review and approval a narrative description of the means and methods that Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the schedule.

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

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

§ 3.10.4 The 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. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and cost to a minimum. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:

- .1 provide a graphic representation of all activities and events that will occur during performance of the Work;
- .2 identify each phase of construction and occupancy; and
- .3 set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents hereinafter referred to as Milestone Dates.

§ 3.10.5 The Owner shall have the right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any rescheduling of performance of the Work under this Section 3.10.5 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1 and an equitable adjustments in the Contract Sum, if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, (2) such rescheduling is required for the convenience of the Owner and is not attributable to any act of omission of Contractor, and (3) if Owner agrees to the Contract Sum adjustment prior to any rescheduling.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections (all changes and selections to be approved by Owner and Architect in advance) made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 At the Date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to Architect for submittal to Owner: Record Drawings showing the field changes and selections (all changes and selections to be approved by Owner and Architect in advance) affecting the general construction, mechanical, electrical, plumbing, and all other Work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of Architect's Drawings obtained and paid for by Contractor. Contractor shall maintain at the job site one (1) set of Architect's Drawings and indicate thereon each field change as it occurs. The Contractor shall post all Addenda on Construction Documents prior to commencing work on the site.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent re-submittal. Additional service charges as outlined in Section 3.2.7 may be charged by the Architect in this event.

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop

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

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

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

**§ 3.12.11** The Contractor shall submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least 30 days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, the Contractor shall submit all Samples in adequate time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall be submitted to the Architect within four weeks of the date of the Contract for construction.

**§ 3.12.12** The Contractor shall submit the number of copies of Shop Drawings, Product Data, Samples and similar submittals which the Contractor and his Subcontractors need for their use plus two additional sets for the Architect and one additional set for each of the Architect's consultants involved with the particular section of work. Where shop drawings are involved, 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 his consultants and returned to the Contractor for his use, distribution, correction or re-submittal as required. The Architect and his consultants will retain the marked up prints. After final review and correction of the submittal, the Contractor shall send two corrected sets to the Architect, and one to each of the Architect's consultants involved with the particular section of work.

### **§ 3.13 USE OF SITE**

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

**§ 3.13.1** 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 materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.



**§3.13.2** The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without written consent of the Owner.

**§3.13.3** Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision on the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of: (1) any area and buildings adjacent to the site or the Work or (2) the Building in the event of partial occupancy.

**§3.13.4** Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrance and parking areas other than those designated by Owner. Without limitation of any other provisions of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time.

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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

**§ 3.15.3** Prior to the Architect's inspection for Submittal Completion the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roof, 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.

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### § 3.18 INDEMNIFICATION

**§ 3.18.1** To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Owner, the Board of Trustees of Owner, all elected officials, employees and agents of Owner and of any of the above mentioned parties (the "Indemnified Parties") from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty, or cause of action (including attorneys' fees), directly or indirectly arising out of, resulting from, or related to (in whole or in part), (1) the Work performed hereunder, (2) the Contract, or (3) the act or omission of Contractor, a Subcontractor, or an individual, partnership, joint venture, corporation or other entity (a) directly or indirectly employed by Contractor or a Subcontractor, or (b) for whose acts or omissions Contractor or a Subcontractor may be liable (excluding property damage to the Work itself, covered by Owner's all-risk builder's risk insurance, subject to Contractor's liability for any deductible amounts thereunder). The obligations of Contractor under this indemnification shall apply to all matters except those arising solely from the wanton and willful negligence or the malicious acts or omissions of Owner. Further, the obligations of Contractor under this indemnification shall not extend to the liability of Architect, its agents, or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, (2) the giving of or failure to give directions or instructions by Architect, its agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage, or (3) any matter prohibited by Section 130.002, Texas Civil Practice and Remedies Code. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding, or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, Owner shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and Owner, and Owner shall have reasonably concluded that there may be legal defenses available to it that are different from, or additional to, or inconsistent with, those available to Contractor, then Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification Section, then Owner, at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Contractor to Owner, together with interest on the same from the date any such expense was paid by Owner until reimbursed by Contractor, at the rate of interest provided to be paid on judgments by the law of the jurisdiction to which the interpretation of the Contract is subject. The obligations of Contractor under this Section shall survive the expiration of the Contract and specifically shall survive the limitations contained in Section 15.1 hereof.

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

### § 3.19 SUBSTITUTIONS OF PRODUCTS AND SYSTEMS, "OR EQUAL" BRANDS

**§ 3.19.1** The materials, products and the systems covered by these specifications have been selected as a standard because of quality, particular suitability, or record of satisfactory performance. It is not intended to preclude the use of equivalent or better materials, products or systems provided that it meet the requirements of the particular project and have been approved in an addendum as a substitution prior to the submission of bids. If prior written approval in an addendum has not been obtained, it will be assumed that the Bid is based upon the materials, products, and systems described in the Bidding Documents and no substitutions will be permitted, except as provided hereinafter.

**§ 3.19.2** If, after award of contract, the Contractor or one of his Subcontractors or Suppliers determines 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 the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate modification.

### § 3.20 RECORD DRAWINGS

**§ 3.20.1** At the completion of the project, the Contractor shall submit one complete set of blue lines showing all changes and routing of utilities made during construction, excluding Architect made CAD changes, to the Architect. Drafting

shall be legible to the Architect's satisfaction. The Contractor shall pay for the cost of the required recording/drafting. The record set shall be kept up to date on a daily basis and the Architect shall review its status at the project meetings. The Architect shall furnish the Contractor with a blueline set at contract award which shall have all Addenda incorporated. The Owner will pay for the printing of the blueline set. The Architect will incorporate any record information into the construction (CAD) documents and provide the Owner with an electronic copy of the record information on the Construction documents that have all bid and construction changes incorporated. The cost for incorporating the record information into the CD will be paid for by the Owner. The Architect will transmit the electronic CD to the Owner with a copy of the transmittal to the Contractor's construction manager.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

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

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the former Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

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

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

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect shall not have control over or charge of and shall not be responsible for safety precautions and programs in connection with the Work. Architect shall be responsible for promptly notifying Contractor of the failure of Contractor, Subcontractors or any other persons performing any of the Work, in failing to use proper construction means, methods, techniques, sequences, procedures, safety precautions and programs, but only to the extent Architect becomes aware of, or should, exercising due professional diligence, be aware of, same. Architect shall also promptly notify Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

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

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

§ 4.2.6 The Architect has authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

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

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

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

§ 4.2.13 DELETED.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.



## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, but no later than 10 days prior to the submittal date for the Contractor's first Application for Payment shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. Failure of the Contractor to submit the subject names in a timely manner may delay processing of the Contractor's Application for Payment.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.

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

### § 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.3.1 All subcontracts shall be in written form and shall specifically provide that Owner is an intended third-party beneficiary of the subcontract.

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

**§ 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.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

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

### **§ 6.2 MUTUAL RESPONSIBILITY**

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

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

**§ 6.2.3 DELETED.**

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

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

**§ 6.3 OWNER'S RIGHT TO CLEAN UP**

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

**ARTICLE 7 CHANGES IN THE WORK**

**§ 7.1 GENERAL**

**§ 7.1.1** Changes in the Work may only 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 and is subject to the approval of the 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 and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect and is subject to the approval of the Owner.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 and 9.7, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

**§ 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** Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited, to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

**§ 7.2.3** Contractor shall keep and periodically submit to Owner copies of a log for all Change Orders.

**§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

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

§ 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 in writing between the Owner and the Contractor;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon in writing between the Owner and the Contractor;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, in each case in writing between the Owner and the Contractor; or
- .4 As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit not to exceed a total maximum of **fifteen percent (15%)** for all Work, and further limited to as follows, not to exceed five percent (5%) for Work done by Contractor's employees and **ten percent (10%)** of such Work's actual cost to be apportioned between any and all Subcontractors and Sub-subcontractor. "Actual cost" does not include any item that could be deemed to be a general conditions cost or overhead, such as, but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### **§ 7.4 MINOR CHANGES IN THE WORK**

The Architect has authority after having obtained Owner's approval to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### **ARTICLE 8 TIME**

#### **§ 8.1 DEFINITIONS**

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

**§ 8.1.1.1** The Work shall be fully completed within the time limit and/or date stated in the Contract between Owner and Contractor.

**§ 8.1.1.2 Liquidated Damages:** If the Contractor should fail to fully complete the Work within the stated time (subject however to extension of time duly granted in the manner and for the causes specified in the General Conditions), Contractor shall be charged by and shall pay to Owner, as liquidated damages, the sum specified in Article 3 of the AIA document A101 – 2017 by and between Owner and Contractor to which this document is attached as Exhibit A per calendar day that the Work remains incomplete beyond the time fixed for completion. Contractor hereby agrees that from the nature of the project it would be impracticable and extremely difficult to fix the actual damage that would or will be suffered in the event that Contractor should fail to fully complete the Work by the time limit or date stated and the amount of the liquidated damages are fair and reasonable. The parties agree that the liquidated damages are a reasonable forecast of just compensation for the harm done to Owner that would be caused by Contractor's failure to timely complete the Work. Contractor agrees that the amount of liquidated damages due Owner may be deducted by Owner from any monies that might otherwise be or become payable to Contractor.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

#### **§ 8.2 PROGRESS AND COMPLETION**

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

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

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

#### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes



beyond the Contractor's control; or by delay authorized by Owner pending mediation, or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor or that are otherwise the responsibility of Contractor and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

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

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contractor shall not be entitled to damages of any type for delays caused by Owner, his servant, agents, employees, or separate Contractors hired or retained by Owner. Contractor may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. 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 intentional interference with Contractor's performance of the Work.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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

**§ 9.1.1 Commitment of Current Revenues Only.** As reflected in Section 4.5 of the modified AIA document A101 – 2017 Edition by and between Owner and Contractor to which this document is attached as Exhibit A, in the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as Architect may direct or as required by Owner. This schedule, when approved by Architect and Owner, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment. All items with entered values will be transferred by Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directives values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by Architect and approved by Owner. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed, and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Any

allowances included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall be accompanied by a certification by an office of Contractor to the effect that:

There are no known mechanics', materialman's or laborers' liens or claims, or any other liens or claims, legal or equitable, contractual, statutory, or constitutional, outstanding or known to exist at the date of this Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics', materialman's or laborers' lien or claim, or any other lien or claim, legal or equitable, contractual, statutory, or constitutional, on the Work; and waivers and releases from all Subcontractors, laborers, and material men for Work done and materials furnished have been obtained in such form as to constitute an effective waiver and release of all such liens and claims under the laws of the state within which the Project is located and shall be delivered to Architect together with Contractor's waiver and release of liens and claims at the time of submission of the Application for Payment.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing by the Owner and Surety. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

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

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and on all other information available to Architect including, without limitation, the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and

inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified and that the aggregate amount theretofore paid to Contractor plus any applicable retention does not exceed the value of the completed portion of the Work. 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, or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents.

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

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

**§ 9.5.4** Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion within 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.

#### **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

**§ 9.6.2** The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.



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

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

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

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

**§ 9.6.7** DELETED.

### **§ 9.7 FAILURE OF PAYMENT**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Contract, including but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7 pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

**§ 9.7.1** If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner sole discretion, elect either to (i) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (ii) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which 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 (which Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of issuance of the certificate of final payment by Architect unless otherwise provided in the Certificate of Substantial Completion. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner and/or Owner's employees and if applicable, the public, could occupy the building on that date and the completing of the Work by Contractor would not materially interfere or hamper Owner's or Owner's employees and if applicable, the public, (or those claiming by, through, or under Owner) from normal County operations. As a further condition of Substantial Completion acceptance, Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. If Contractor requests a Substantial Completion review, and Architect, after performing the Substantial Completion review, finds that the Project was not ready for the Substantial Completion review, then Contractor shall pay the Architect's fees for any additional Substantial Completion reviews.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met: (1) All inspections by governmental authorities have jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect. (2) All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

**§ 9.8.7** After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In this report, the Contractor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

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

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

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

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 faulty or defective Work appearing after Substantial Completion.

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

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

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

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

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

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

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

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

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

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

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

**§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons



or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3 DELETED.**

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

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

**§ 10.3.6 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. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

**ARTICLE 11 INSURANCE AND BONDS**

**§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

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

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

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

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

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES**

**§ 11.1.5.1** Contractor shall carry and keep in full force for the duration of the project the following Coverage.

| <b>Coverage</b>                         | <b>Minimum Amounts and Limits</b>                         |
|---|---|
| <b>Worker's Compensation</b>            |   |
| Employer's Liability:                   | Statutory Limits  |
| Bodily Injury by Accident               | \$500,000.00/each accident                                |
| Bodily Injury by Disease                | \$500,000.00/each employee                                |
| Bodily Injury by Disease                | \$500,000.00/Policy Limit                                 |
| <br><b>Commercial General Liability</b> |   |
| Bodily Injury/Property Damage           | \$1,000,000.00 per occurrence<br>\$2,000,000.00 aggregate |

(Premises Operations, Independent Contractors, Product/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage).

**Comprehensive Automobile Liability**      \$1,000,000.00 Combined Single  
Limit per Occurrence

Auto liability insurance shall be on a standard form written to cover all owned, hired, and non-owned automobiles. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insured, contain cross-liability and severability of interest endorsements, and state that this insurance is primary insurance as regards to any other insurance carried by the Indemnified Parties (see Section 3.18).

**§11.1.5.2** All policies shall contain special endorsements to include:

1. The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in Section 3.18 (Indemnified Parties);
2. Waiver of Subrogation in favor of Owner under the Worker's Compensation and Employer's Liability policies.
3. A statement that a notice shall be given to Owner by certified mail thirty (30) days prior to cancellation or upon any material changes in coverage.
4. Contain cross-liability and severability of interest endorsements;
5. state that this insurance is primary insurance in regard to any other insurance carried by an Indemnified Party (see Section 3.18);

.6 the following coverage:

- a. Premises/Operations;
- b. Independent Contractors;
- c. Completed Operations for a period of two years following the acceptance of Contractor's Work;
- d. Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor, Broad Form Property Damage, and Personal Injury Liability with employee and contractual exclusions removed);
- e. Deletion of exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards;
- f. Personal Injury Liability with the contractual exclusions removed;
- g. Cross Liability Endorsement.

#### §11.1.5.6 Umbrella Excess Liability Insurance

|                                   |   |
|-----------------------------------|---|
| Bodily Injury and Property Damage | \$2,000,000.00 per occurrence<br>\$2,000,000.00 aggregate |
|-----------------------------------|---|

This policy shall be written on an umbrella excess basis above, the coverage described in this Article 11. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insureds. The policy shall contain cross-liability and severability of interest endorsements and shall state, as regard the Indemnified Parties that the insurance is primary insurance as to any other insurance carried by any Indemnified Party. The policy shall be endorsed to provide the defense coverage obligation.

§11.1.6 Further, Contractor shall require all Subcontractors to carry similar insurance coverage and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to Owner for approval before any Work commences.

§11.1.7 In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all claims for which the required insurance would have provided coverage.

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

##### §11.1.8.1 Definitions:

- .1 Certificate of coverage ("certificate") - A copy of a 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 person's or entity's employees providing services on a project, for the duration of the project.
- .2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- .3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person 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 which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

**§11.1.8.3** The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

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

**§11.1.8.5** The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

- .1 a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- .2 no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

**§11.1.8.6** The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

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

**§11.1.8.8** 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.

**§11.1.8.9** 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, Section 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 year thereafter;
- .6 notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- .7 contractually require each person with whom it contracts, to perform as required by paragraphs .1 - .7, with the certificates of coverage to be provided to the person for whom they are providing services.

**§11.1.8.10** By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the 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.

**§11.1.8.11** The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

## **§ 11.2 OWNER'S LIABILITY INSURANCE**

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

**§ 11.2.1** 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 or 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.

**§11.2.2** 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 Article 11.

## **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** 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 others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. The policy must also name its subcontractors and the Owner as additional insured, as their respective interests may appear. 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. The policy must have the following endorsement: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.3.1.1.1** For any claim made against Contractor's Builder's Risk Insurance, the deductible shall not exceed \$2,500.00 for a Contract Sum of less than \$4 million. For a Contract Sum of \$4 million or more, the deductible shall not exceed \$5,000.00.

**§ 11.3.1.1.2** 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 Section 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.

**§ 11.3.1.1.3** 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.

**§ 11.3.1.2 DELETED.**

**§ 11.3.1.3 DELETED.**

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.1.5** Partial occupancy or use shall not affect the validity or coverage of property insurance.

**§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.**

**§ 11.3.3 LOSS OF USE INSURANCE DELETED.**

**§ 11.3.4 DELETED.**

**§ 11.3.5 DELETED.**

**§ 11.3.6 DELETED.**

### **§ 11.3.7 WAIVERS OF SUBROGATION**

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 Article 11 or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as 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.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** DELETED.

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

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The 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 Subchapter A of Chapter 3503 of the Texas Insurance Code.

**§11.4.1.1** 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.

**§11.4.1.2** 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.

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

**§ 11.4.3** 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 on or after the date of execution of the Contract but prior to the date of the notice to proceed. 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.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

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

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs

and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## **§ 12.2 CORRECTION OF WORK**

### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

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

### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work (unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties), or within such longer period of time as may be prescribed by law or in equity, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This corrective period 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 performance of the Work. Corrective Work shall be warranted to be free from defects for a period equal to the longer of six (6) months after the completion of the corrective Work or one (1) year after the Date of Substantial Completion (subject to extension as previously described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable special warranty, if applicable, required by the Contract Documents. Any defect in such Work shall be corrected again by Contractor promptly upon notice of the defect from Owner. This obligation under this Section 12.2.2.1 shall survive acceptance of the Work under the Contract and termination of the Contract by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

**§ 12.2.2.4** Just before the termination of the various guarantee periods, Contractor shall accompany Owner's agent and Architect on an inspection tour of the building and shall note any defects and shall start remedying these defects within ten (10) days of the inspection tour and shall prosecute the Work without interruption until accepted by Owner and Architect, even though such prosecution should extend beyond the limit of the guarantee period.

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

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused in whole or in part by the Contractor's correction or removal of Work that is defective or otherwise 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 or under law or in equity. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

### § 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice or if delivered by facsimile to the offices of the person or corporation for which it was intended. Facsimiles received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity or by any other agreement, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.

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

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. Architect or Owner may at any time request and receive from Contractor satisfactory evidence that materials, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.

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



**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, or reveal faulty or otherwise defective Work, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, Contractor shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by Contractor's failures, including, without limitation, those costs of repeated and additional procedures and compensation for Architect's services and expenses of Owner's personnel and consultant fees and expenses. Such costs shall be paid by Contractor within ten (10) days of receipt of invoice from Owner with supporting data attached.

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

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

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

### **§ 13.6 INTEREST**

An overdue payment bears interest at the legal rate established by the Texas Government Code, currently in Section 2251.025, or in the event no rate is so established, at the rate of one percent (1%) each month. Any such payment shall be deemed overdue on the thirty-first (31<sup>st</sup>) day after Owner receives an invoice from Contractor.

### **§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

**§ 13.8.1** The Contractor shall maintain policies of employment as follows: "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."

**§13.8.1.1** 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.

### **§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT**

**§13.9.1** 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.

**§13.9.2** 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.

**§13.9.3** Final payment shall not be made until this letter of certification has been received.

## 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 sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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

*(Paragraphs deleted)*  
stopped.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed in accordance with the Contract Documents.

§ 14.1.4 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Sections 14.1.1 and 14.1.2.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials and equipment;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or
- .6 otherwise does not fully comply with the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 To the extent the costs of completing Work, including compensation for additional professional services and expenses, exceed those costs that would have been payable to Contractor to complete the Work except for



Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by Owner will be determined by Owner and confirmed by Architect.

**§14.2.5** In addition to Owner's right to remove Contractor from any part of Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of Work or any subcontract or all remaining Work for any reason whatsoever by giving seven (7) days' prior written notice to Contractor specifying the part of Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of Work not terminated. If any part of Work or subcontract is so terminated, Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract including reasonable demobilization and cancellation charges provided said Work is authorized in advance by Architect and Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

**§14.2.6** Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Section 14.2.5.

**§14.2.7** Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.2.5 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 14.2.5.

### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

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

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

### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, without any overhead or profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right adjustment, or interpretation of the Contract Terms, payment of money, extension of 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. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be by written notice.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Said written notice of claims shall state specifically the reason for the claim, the date or dates of the cause or causes of the claim, and if any extension of time is requested, the number of days of extension requested.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such claim shall be value unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if Architect determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

*(Paragraph deleted)*

Contractor shall not be entitled to claims for additional time and/or increase in Contract Price due to a problem or non-performance of a subcontractor.

**§ 15.1.7** In the event the Contractor fails to achieve substantial completion by the date indicated in the Contract, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount as stated in Section 3.1.1 of the modified AIA document A 101 – 2007 Edition by and between Owner and Contractor to which this document is attached as Exhibit A per day until the Work is substantially completed. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult and in no sense be considered a penalty.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## § 15.2 INITIAL DECISION

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

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

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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

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

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

§ 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 DELETED.

## § 15.3 MEDIATION

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

§ 15.3.3 The parties shall share the mediator's fee. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

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.

**OWNER:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_

\_\_\_\_\_  
Date

**CONTRACTOR:**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Date

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain

*(Paragraphs deleted)*



|   |               | South Texas Build<br>Con LLC | Argio Roofing &<br>Construction, LLC | CS ADVANTAGE<br>USAA INC | AMERICAN<br>CONTRACTING<br>USA INC | G&G<br>CONTRACTORS<br>(RG Enterprises,<br>LLC) |
|---|---------------|------------------------------|--------------------------------------|--------------------------|------------------------------------|--|
| <b>Rank</b>   |               | <b>4</b>                     | <b>3</b>                             | <b>1</b>                 | <b>2</b>                           | <b>5</b>                                       |
| Maximum points  | <b>100.00</b> | <b>77.85</b>                 | <b>87.50</b>                         | <b>91.46</b>             | <b>90.71</b>                       | <b>76.39</b>                                   |
| <b>Price</b>  | <b>60</b>     | <b>60</b>                    | <b>54</b>                            | <b>56</b>                | <b>53</b>                          | <b>49</b>                                      |
| Base Bid (LI1)  |               | \$728,119.00                 | \$801,800.00                         | \$774,000.00             | \$829,000.00                       | \$896,800.00                                   |
| <b>Offeror's experience and reputation</b>  | <b>23</b>     | <b>5.85</b>                  | <b>18.01</b>                         | <b>21.012</b>            | <b>22.512</b>                      | <b>14.176</b>                                  |
| Three (3) K-12 reference forms (LI9)  | 1.5           | 0                            | 0.5                                  | 0                        | 1                                  | 0  |
| Rating of 2 or better, plus similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)                  |               | 0 out of 3                   | 1 out of 3                           | 0 out of 3               | 2 out of 3                         | 0 out of 3                                     |
| Three (3) Supplier Reference Letters (LI20)   | 1.5           | 0                            | 0                                    | 1                        | 1.5                                | 1.5  |
|   |               | None provided                | None provided                        | 2 out of 3               |                                    |  |
| Claims, judgments, arbitration proceedings or suits (LI10)  | 1             | 1                            | 1                                    | 1                        | 1                                  | 1  |
| Staff experience (industry) (LI17)  | 2             | 2                            | 2                                    | 2                        | 2                                  | 2  |
| Staff experience (firm) (LI17)  | 2             | 2                            | 2                                    | 2                        | 2                                  | 2  |
| Three (3) current or past K-12 projects (LI12)  | 14            | 0                            | 11.66                                | 14                       | 14                                 | 7  |
| Similar scope and size (2.332 pts for scope; 2.332 pts for size per reference)  |               | None listed                  | 3 scope; 2 size                      | 3 scope; 3 size          | 3 scope; 3 size                    | 1 scope; 2 size                                |
| Current or past Non K-12 projects (LI13)  | 1             | 0.85                         | 0.85                                 | 1                        | 1                                  | 0.68   |
| Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)  |               | 3 scope; 2 size              | 3 scope; 2 size                      | 3 scope; 3 size          | 3 scope; 3 size                    | 2 scopes; 2 sizes                              |
| <b>Quality of the offeror's goods or services</b>   | <b>2</b>      | <b>1</b>                     | <b>2</b>                             | <b>1</b>                 | <b>2</b>                           | <b>1</b>                                       |
| Repeat business for similar scope/size (LI14)   | 1             | 1                            | 1                                    | 1                        | 1                                  | 1  |
| Current or past MISD projects (LI11)  | 1             | 0                            | 1                                    | 0                        | 1                                  | 0  |
| <b>The impact on the ability of the district to comply with rules relating to historically underutilized businesses</b> | <b>1</b>      | <b>1</b>                     | <b>1</b>                             | <b>1</b>                 | <b>1</b>                           | <b>1</b>                                       |
| <b>Offeror's safety record</b>  | <b>7</b>      | <b>5</b>                     | <b>6</b>                             | <b>6</b>                 | <b>6.5</b>                         | <b>4.5</b>                                     |
| *OSHA Form 300 Log (LI22)   | 1.5           | 0.5                          | 1                                    | 1.5                      | 1.5                                | 0  |
|   |               | 1 out of 3                   | 2 out of 3                           |                          |                                    | None provided                                  |
| Safety program manual and/or procedures. (LI23)   | 2             | 2                            | 2                                    | 2                        | 2                                  | 2  |
| Drug/alcohol prevention policy and/or procedures. (LI24)  | 1             | 1                            | 1                                    | 1                        | 1                                  | 1  |
| "Workers Compensation Experience Rating" (LI21)   | 1.5           | 0.5                          | 1                                    | 0.5                      | 1                                  | 0.5  |
|   |               | 1 out of 3                   | 2 out of 3                           | 1 out of 3               | 2 out of 3                         | 1 out of 3                                     |
| Frequency of safety inspections (LI15)  | 1             | 1                            | 1                                    | 1                        | 1                                  | 1  |
| <b>Whether the offeror's financial capability is appropriate to the size and scope of the project</b>                   | <b>3</b>      | <b>1</b>                     | <b>2</b>                             | <b>2</b>                 | <b>2</b>                           | <b>3</b>                                       |
| Financial Statement (LI26)  | 1             | 0                            | 1                                    | 1                        | 1                                  | 1  |
|   |               | 2019                         |                                      |                          |                                    |  |
| Dun & Bradstreet risk indicator (LI27)  | 1             | 0                            | 0                                    | 0                        | 0                                  | 1  |
|   |               | Rating report missing        | N/A                                  | Rating report missing    | N/A                                |  |
| Surety Letter (LI25)  | 1             | 1                            | 1                                    | 1                        | 1                                  | 1  |
| <b>Any other relevant factor specifically listed in the CSP</b>   | <b>4</b>      | <b>4</b>                     | <b>4</b>                             | <b>4</b>                 | <b>4</b>                           | <b>4</b>                                       |
| On-time project completion (LI11-13)  | 1             | 1                            | 1                                    | 1                        | 1                                  | 1  |
| General Contractor or Joint Venture (LI16)  | 1             | 1                            | 1                                    | 1                        | 1                                  | 1  |
| Projects currently in progress. (LI18)  | 1             | 1                            | 1                                    | 1                        | 1                                  | 1  |
| Project schedule/timeline (LI19)  | 1             | 1                            | 1                                    | 1                        | 1                                  | 1  |

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



145  
**Superintendent of Schools**

# AIA<sup>®</sup> Document A101<sup>™</sup> – 2017

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

**AGREEMENT** made as of the  day of  in the year 202\_\_  
*(In words, indicate day, month and year.)*

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

McALLEN INDEPENDENT SCHOOL DISTRICT  
2000 North 23<sup>rd</sup> Street  
McAllen, Texas 78501

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

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

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

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

The parties should complete A101<sup>™</sup>-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201<sup>™</sup>-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.



## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
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EXHIBIT A MODIFIED AIA DOCUMENT A201-2007, GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION  
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## INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), all sections of the Project Manual, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

**§ 3.3 Substantial Completion**

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute and achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information.)

Not later than  (  ) calendar days from the date of commencement of the Work.

By the following date:

Final Completion shall be 30 calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

| Portion of Work      | Substantial Completion Date |
|----------------------|-----------------------------|
| <input type="text"/> | <input type="text"/>        |

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be  (\$  ), subject to additions and deductions as provided in the Contract Documents. The Contract Sum consists of two portions, the budgeted amount of  Dollars and  Cents (\$  ) and a contingency of  Dollars (\$  ) as specified in Section 4.3 below. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Contractor acknowledges and agrees that the contingency portion of the Contract Sum set forth in Section 4.3 shall not be due or payable unless and to the extent that Owner authorizes such expenditure in writing. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

**§ 4.2 Alternates**

§ 4.2.1 Alternates, if any, included in the Contract Sum:

| Item                 | Price                |
|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> |

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

| Item                 | Price                | Conditions for Acceptance |
|----------------------|----------------------|---------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/>      |

§ 4.3 Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

| Item        | Price                   |
|-------------|-------------------------|
| Contingency | \$ <input type="text"/> |

§ 4.4 Unit prices, if any:

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

[Unit prices for certain components are specified in the bidding form attached hereto as part of Exhibit B. Such prices are only applicable in the event Owner opts to increase or decrease the number of required components.]

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

§ 4.5 Liquidated damages, if any:  
(Insert terms and conditions for liquidated damages, if any.)

§ 4.5.1 **Substantial Completion.** Owner and Contractor recognize that time is of the essence in this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in Article 3, plus any extension thereof in accordance with Article 8 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner [ ] Dollars and Zero Cents (\$[ ].00) per calendar day for each day after the Substantial Completion date noted in Article 3 until the Work is substantially complete.

§ 4.5.2 **Final Completion.** In addition, timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Work within 30 calendar days of the Substantial Completion date (subject to adjustment of such date in accordance with the terms hereof). It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Contractor's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Contractor and Owner also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner [ ] Dollars and Zero Cents (\$[ ].00) per calendar day for each day after the Final Completion date noted in Article 3 until the Work is substantially complete.

§ 4.5.3 *It is expressly understood that the said sum per day set forth in this Section 4.5 is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty.* It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from any Payment made to the Contractor any sums due from Contractor to Owner pursuant to Section 4.5 above.

§ 4.6 Other:  
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 4.6.1 **Commitment of Current Revenues Only.** In the event that during any term hereof, the governing body of any local government party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each government party hereto pursuant to the provisions of Texas Local Government Code §271.903.

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the fifth day following approval by the Board of Trustees or as otherwise required by applicable law .  
*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum less any unused Owner's contingency among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner and the Architect may require. This schedule of values, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

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

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified to the extent approved by the Owner in writing, as provided in Section 7.3.9 of AIA Document A201.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201 or amounts certified by the Architect and disputed by the Owner; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### **§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner shall withhold the following amount, as retainage, from the payment otherwise due:  
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five percent (5%) if the amount set forth in Section 4.1 above for the Contract Sum is at least Four Hundred Thousand Dollars (\$400,000.00) and ten percent (10%) if such amount is less than Four Hundred Thousand Dollars (\$400,000.00).

*(Paragraphs deleted)*

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

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

None.

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

Retainage on any incomplete Work and Unsettled claims.

*(Paragraph deleted)*

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

**§ 5.1.10** If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

**§ 5.1.11** If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claim.

## **§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum minus disputed sums, authorized deductions and liquidated damages, shall be made by the Owner to the Contractor after

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;
- .3 the Contractor has provided the following documents:
  - .1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;
  - .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](http://www.tea.state.tx.us/school.finance/facilities/cert_2004.pdf);
  - .4 Contractor's warranties, organized as required elsewhere in the Contract Documents;
  - .5 Maintenance and Instruction Manuals;
  - .6 Owner's Final Completion Certificate; and
  - .7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the

Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes;

- .4 a final Certificate for Payment has been issued by the Architect; and
- .5 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, and upon acceptance by the Owner and Architect, and after satisfactory evidence has been given by the Contractor that all of the Contractor's bills have been paid and the entire Project is free from liens.

**§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest pursuant to Texas Government Code §2251.025. *(Insert rate of interest agreed upon, if any.)*

%

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*



**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201, the method of binding dispute resolution shall be as follows: *(Check the appropriate box.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201.

*(Paragraphs deleted)*

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** All references to AIA Document A201-2017, AIA Document A201-2007, AIA Document A201 or the A201, shall mean to the modified A201-2007 attached hereto as Exhibit "A". Similarly, references to AIA Document A101-2017, AIA Document A101-2007 or to the A101 shall mean to this A101-2017. Where reference is made in this



Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's representative:  
(Name, address, email address, and other information)

Mr. Ruben Trevino  
McAllen Independent School District  
20000 N. 23<sup>rd</sup> St.  
McAllen, TX 78501-6126

**§ 8.3** The Contractor's representative:  
(Name, address, email address, and other information)



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

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Contractor shall purchase and maintain insurance as set forth in Article II of the AIA Document A201. The Contractor's insurance certificates are attached hereto as Exhibit "D".

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A201. The original bonds required pursuant to Section 11.4 of the A201 and this Section 8.5 are attached to the Owner's execution original of this Agreement as Exhibit "C" with a copy of the bonds attached as Exhibit "C" to the Contractor's execution original.

*(Paragraphs deleted)*

**§ 8.7** Other provisions:

**§ 8.7.1** The Agreement 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 shall be in Hidalgo County, Texas.

**§ 8.7.2** As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.

**§ 8.7.3** 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. As part of that responsibility, 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.

**§ 8.7.4** Contractor acknowledges that the Owner retained the party set forth above under "Architect" above to provide certain design, contract administration and/or other services for the Project, and may not have used an AIA document for the contract with such party. All references in the Contract Documents to the Architect shall be to the entity named on the first page as the "Architect". The parties acknowledge and agree that, notwithstanding any other provision in the Contract Documents, the Owner is not obligated to retain an architect for the Project and the Owner makes no representations about the party set forth above under "Architect" being an architect.



§ 8.7.5 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to 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 full name in a typeface large enough to be seen from a reasonable distance.

§ 8.7.6 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. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 8.7.7 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 of Owner.

§ 8.7.8 The Contractor may not assign its responsibilities, duties, obligations and rights under this Agreement, without the express written consent of the Owner. This does not prevent Contractor from engaging subcontractors to perform various phases of the Project, but Contractor shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 8.7.9 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

§ 8.7.10 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

§ 8.7.11 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by Contractor of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Owner of any of the covenants, conditions or agreements hereof to be performed by Contractor shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 8.7.12 Contractor stipulates that Owner is a political subdivision of the State of the Texas, and, as such, enjoys immunities from suit and liability as provided by the constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law.

§ 8.7.13 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract.

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

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 This executed AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™–2007, General Conditions of the Contract for Construction

*(Paragraphs deleted)*

(as modified and attached hereto as Exhibit "A")

(Paragraph deleted)

.3 Drawings attached hereto as part of Exhibit "E".

| Number | Title | Date |
|--------|-------|------|
|        |       |      |

.4 Specifications attached hereto as part of Exhibit "E".

| Section | Title | Date | Pages |
|---------|-------|------|-------|
|         |       |      |       |

.5 Addenda, if any:

| Number | Date | Pages |
|--------|------|-------|
|        |      |       |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.6 The following Exhibits, which are attached hereto:

- .1 Exhibit A The modified AIA Document A201–2007, General Conditions of the Contract for Construction.
- .2 Exhibit B Contractor’s Proposal
- .3 Exhibits C Payment and Performance Bonds
- .4 Exhibit D Contractor’s Insurance Certificates
- .5 Exhibit E Plans and Specifications

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

**OWNER:**

**CONTRACTOR:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

[ ]

By: \_\_\_\_\_

By: \_\_\_\_\_

Printer Name:

Title:

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_

Stephen L. Crain

EXHIBIT A

to

*(Paragraph deleted)*

Agreement dated [ , 20 ], between  
McAllen Independent School District and [ ]  
(CSP 20\_\_-\_\_ [ ])

Modified AIA Document A201-2007 General Conditions of the Contract for Construction



EXHIBIT B

to

Agreement dated [                      , 20    ], between  
McAllen Independent School District and [                      ]  
(CSP 20\_\_-\_\_ [                      ])  
Contractor's Proposal



EXHIBIT C

to

*(Table deleted)*

Agreement dated [                      , 20    ], between  
McAllen Independent School District and [                      ]  
(CSP 20\_\_-\_\_ [                      ])

Payment Bond

and

Performance Bond



(Table deleted)

EXHIBIT D

to

Agreement dated [                      , 20    ], between  
McAllen Independent School District and [                      ]  
(CSP 20\_\_-\_\_ [                      ])

Contractor's Insurance Certificates

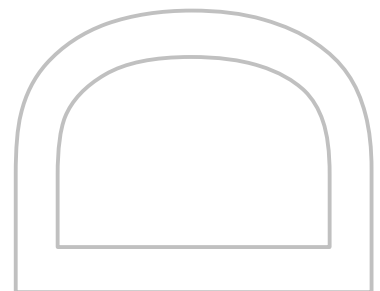
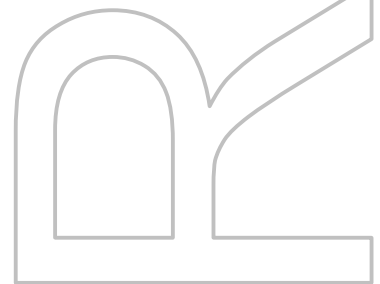
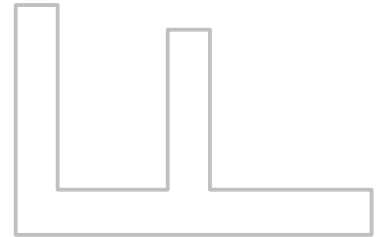
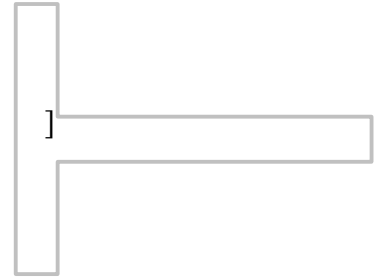


EXHIBIT E

to

Agreement dated [ , 20 ], between  
McAllen Independent School District and [ ]  
(CSP 20\_\_-\_\_ [ ])

Plans and/or Specifications

*(Table deleted)*





# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

### THE OWNER:

(Name, legal status and address)

McALLEN INDEPENDENT SCHOOL DISTRICT  
2000 North 23<sup>rd</sup> Street  
McAllen, Texas 78501

### THE ARCHITECT:

(Name, legal status and address)

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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.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect pursuant to Section 7.4. At the Owner's option, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

**§ 1.1.1.1** Contractor acknowledges and warrants that it has closely examined all the Contract Documents and is unaware of any instance where the documents are not suitable or are insufficient to enable the Contractor to complete the Work in a timely manner for the Contract sum, and that they include all Work, whether or not shown or described, which reasonably may be inferred or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor (except as provided in Sections 5.3 and 5.4 hereof), (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 of the Contractor under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.3.1** The Work shall include the obligation of the Contractor to visit the site of the Project before submitting a proposal. Such site visit shall be for the purpose of familiarizing Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas. It also includes all supplies, skill, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

### § 1.1.7 INSTRUMENTS OF SERVICE

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

### § 1.1.8 INITIAL DECISION MAKER

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

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves have been referred to Owner and Architect by Contractor prior to the submission of bids and have been clarified by an Addendum issued to all bidders.

If such differences or conflicts were not called to Owner's and Architect's attention prior to submission of bids, Architect shall decide which of the conflicting requirements will govern based upon the following: the most stringent of the requirements will take precedence over the less stringent; the most expensive item will take precedence over the less expensive, and subject to the approval of Owner, Contractor shall perform the Work at no additional cost and/or time to Owner in accordance with the Architect's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable as being necessary to produce the intended results.

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 The Agreement;
- .2 Addenda, with those of later date having precedence over those of earlier date;
- .3 Supplemental Conditions, if any;
- .4 The General Conditions of the Contract for Construction;
- .5 Specifications
- .6 Drawings, in the case of inconsistency between the Drawings and Specifications or within either document, not clarified by Addendum, the better quality or greater quantity of Work shall be included in the Contract Documents. Clarifications of the inconsistency will be accomplished with the Contractor and, if necessary, an appropriate reduction in the contract will be accomplished by Change Order. Figures given on drawings govern scale measurements. Large scale drawings take precedence over small scale drawings. Written words take precedence over numbers. Handwritten documents take precedence over typewritten documents. Existing conditions take precedence over drawings and specifications for dimensions and shall be verified by the Contractor. The Contractor proceeds at his own risk if conflicts or discrepancies are not resolved prior to the execution of the Work.

§ 1.2.1.2 If Work is required in a manner to make it impossible to produce Work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, Contractor shall request in writing an interpretation from Architect before proceeding with the Work. If Contractor fails to make such request, no excuse will thereafter be entertained for failure to carryout Work in the required manner or provide required guarantees, warranties, or bonds, and Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

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

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

### **§ 1.3 CAPITALIZATION**

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

### **§ 1.4 INTERPRETATION**

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

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

**§ 1.5.1** Instruments of Service, including the Drawings, Specifications, and other similar or related documents and copies thereof are furnished to Contractor for the purpose of performing the Work and are, and shall remain, the property of Owner and Owner will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's or Owner's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

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

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees of Owner, by majority vote, is the only representative of Owner, 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 of the contractual completion date. The Board shall designate, as appropriate, an authorized representative(s) to act on its behalf during the course of construction. In the event that an emergency changes the scope of the Work before the Board's next regular meeting or in order to facilitate and expedite the timely completion of the Work, the Board's authorized representative(s) may approve construction changes that do not exceed \$5,000.00 in increased costs. Any such changes shall be confirmed in writing between the Contractor and the Board's authorized representative(s) 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.

### **§ 2.1.2 DELETED.**

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics and legal limitations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. In connection with the foregoing, Contractor shall be solely responsible for locating (and shall locate prior to performing any Work) all utilities lines, telephone company, cable, sewer lines, water pipes, gas lines, and electrical lines, including without limitation, 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. Under this provision the Architect and Engineer are in no way relieved of their responsibilities outlined in the Contract or other attached contracts for identification of existing conditions.

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

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2 for use on this Project. All costs of reproduction are the responsibility of Contractor.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's or, if applicable landlord's, property by anyone claiming by, through, or under Contractor, or disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3 and any delay resulting from such Work stoppage shall not extend any Milestone Date identified in the Contract for Construction or the required dates of Substantial or Final Completion.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**§ 2.4.1** The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express



authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

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

**§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner in writing any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect and Owner.

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

**§ 3.2.6** The Contractor shall make reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observation of work prior to the Contractor's field superintendent's personal inspection of the work and his determination that the work complies with the Contract Documents.

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

**§ 3.2.8** If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his Warranty, Contractor shall promptly

notify the Architect in writing, providing substantiation for the position. Any necessary changes, including substitutions of materials, may only be accomplished by an appropriate Modification.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

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

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

**§ 3.3.4** Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors, and their agents and employees, and other persons performing portions of the Work under Contract Documents or other arrangements with Contractor.

**§ 3.3.5** Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of Contractor are in addition to Contractor's obligations under other provisions hereunder.

**§ 3.3.6** Contractor shall be responsible for inspection of portion of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.7** Contractor has the responsibility to ensure that all material suppliers and Subcontractors, 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. Contractor shall coordinate its Work with that of all others on the Project, including of construction utilities.

**§ 3.3.8** Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the buildings and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner (s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

**§ 3.3.9** Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper



correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all Work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said Work and the Drawings and Specifications for the Work.

**§ 3.3.10** Any discrepancy or omission in the dimensions or elections shown on the Drawings and Specifications or found in previous Work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the misdescription of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

**§ 3.3.11** Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. Contractor shall be liable for all property damage, including repairs and replacements of the Work and economic losses, which proximately result from the breach of this duty. Contractor shall advise Architect:

- .1 if a specified product deviates from good construction practices;
- .2 if following the Specifications will affect any warranties; or
- .3 any objections which Contractor may have with the Specifications.

Nothing contained in Section 1.1.3 shall alter the responsibilities established in this Section.

### **§ 3.4 LABOR AND MATERIALS**

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

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making requests for substitutions based on Section 3.4.2, Contractor:

- .1 represents that Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that Contractor will provide the same warranty for the substitution that Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation for the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgments as an experienced Contractor to adopt and implement policies and practices designed to avoid Work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Section 8.3 hereof, Contractor shall be liable to Owner for all damages suffered by Owner.

**§ 3.4.4** Materials shall conform to manufacturer's standards in effect at the date of execution of the Agreement and shall be installed in strict accordance with manufacturer's directions. Contractor shall, if required by Owner or Architect, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

**§ 3.4.5** When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents.

**§ 3.4.6** When the manufacturer's name, patent numbers, underwriter's labels, model numbers or similar identifying marks are required, such markings shall be located as inconspicuously as possible.

### **§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of the best 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 faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** ALL WARRANTIES SHALL INCLUDE LABOR AND MATERIALS AND THE MANUFACTURER'S WARRANTY SHALL BE SIGNED BY SUBCONTRACTOR AND COUNTERSIGNED BY CONTRACTOR. ALL WARRANTIES SHALL BE ADDRESSED TO OWNER AND DELIVERED TO ARCHITECT UPON COMPLETION OF THE WORK AND BEFORE OR WITH THE SUBMISSION OF REQUEST FOR FINAL PAYMENT.

**§ 3.5.3** Contractor shall issue in writing to Owner as a condition precedent to final payment a "general warranty" reflecting the terms and conditions of this Section 3.5 for all Work under the Contract.

**§ 3.5.4** The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after final completion of the entire Work unless a longer time is specifically called for in the specifications. The Contractor shall assign all components, equipment and fixture warranties to the Owner and will deliver all manuals to the Owner at the completion of construction.

**§ 3.5.5** Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to Owner.

**§ 3.5.6** Warranties shall become effective on a date established by Owner and Architect in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties.

**§ 3.5.7** If Architect considers it impractical, because of unsuitable test conditions or some other factors, to execute simultaneous final acceptance of all equipment, portions of properly installed and functioning equipment may be certified by Architect for final acceptance, subject to Owner's approval, when that portion of the system is complete and ready for operation as called for under Section 9.8.1.

**§ 3.5.8** Contractor shall warrant for a period of twelve (12) months that the building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Contractor's control. Contractor shall, immediately upon notification by Owner of water penetration, determine the source of water penetration and, at its own expense, do any Work necessary to make the building(s)

watertight. Contractor shall also, at its own expense, repair or replace any other damaged material, finishes, and furnishings, damaged as a result of this water penetration, to return the building(s) to its (their) original condition.

**§3.5.9** In addition to the foregoing stipulations, Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

**§3.5.10** If for any reason Contractor cannot warrant any part of the Work using material or construction methods that have been specified, or shown, it shall notify Owner and Architect in writing before the Contract is signed, giving reasons, together with the name of product and data on a substitution it can warrant.

### **§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

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

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall make application, 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, including without limitation, street openings, sidewalk, and other obstructions, access over public ways and storage necessary for proper execution and which are, legally required at the time bids are received or negotiations concluded.

**§3.7.1.1** 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 and state and local authorities, that require completion of documentation and/or acquisition of all permits for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during construction phase which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

- a. The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.
- b. The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, Inspection Fees and Plan Checking Fees; temporary utility charges, tap charges and water meter charges and any other similar fees assessed by jurisdictional authorities having control over the Project.
- c. The Owner shall pay fees payable to the Texas Department of Licensing and Regulations (TDLR) for document review relative to the Elimination of Architectural Barriers Act and the Architect will submit the documents to the TDLR for review and approval.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work (including, without limitation, the installation of any materials or equipment) that it knows or reasonably should have known would be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the

Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner in writing an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or based on data provided to Contractor and by the Contractor's prior inspections, tests, reviews, and pre-construction services for the Project; or by the Contractors inspections, tests, reviews and pre-construction services that Contractor had the opportunity and obligation to make in connection with the Project but did not do so.

**§ 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, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

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

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness. If a decision is needed to avoid a delay, Contractor shall notify Architect and Owner in writing sufficiently in advance of needed date to allow reasonable time for selections to be made.

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Architect, unless the superintendent leaves the employment of the Contractor. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner or Architects object to any nominated superintendent. Such approval by the Owner shall not be unreasonably withheld.

**§ 3.9.3 DELETED.**



### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to Architect with Contractor's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original schedule. If any schedule submitted sets such a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to Architect and Owner for their review and approval a narrative description of the means and methods that Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the schedule.

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

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

§ 3.10.4 The 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. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and cost to a minimum. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:

- .1 provide a graphic representation of all activities and events that will occur during performance of the Work;
- .2 identify each phase of construction and occupancy; and
- .3 set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents hereinafter referred to as Milestone Dates.

§ 3.10.5 The Owner shall have the right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any rescheduling of performance of the Work under this Section 3.10.5 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1 and an equitable adjustments in the Contract Sum, if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, (2) such rescheduling is required for the convenience of the Owner and is not attributable to any act of omission of Contractor, and (3) if Owner agrees to the Contract Sum adjustment prior to any rescheduling.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections (all changes and selections to be approved by Owner and Architect in advance) made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 At the Date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to Architect for submittal to Owner: Record Drawings showing the field changes and selections (all changes and selections to be approved by Owner and Architect in advance) affecting the general construction, mechanical, electrical, plumbing, and all other Work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of Architect's Drawings obtained and paid for by Contractor. Contractor shall maintain at the job site one (1) set of Architect's Drawings and indicate thereon each field change as it occurs. The Contractor shall post all Addenda on Construction Documents prior to commencing work on the site.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent re-submittal. Additional service charges as outlined in Section 3.2.7 may be charged by the Architect in this event.

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop

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

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

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

**§ 3.12.11** The Contractor shall submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least 30 days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, the Contractor shall submit all Samples in adequate time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall be submitted to the Architect within four weeks of the date of the Contract for construction.

**§ 3.12.12** The Contractor shall submit the number of copies of Shop Drawings, Product Data, Samples and similar submittals which the Contractor and his Subcontractors need for their use plus two additional sets for the Architect and one additional set for each of the Architect's consultants involved with the particular section of work. Where shop drawings are involved, 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 his consultants and returned to the Contractor for his use, distribution, correction or re-submittal as required. The Architect and his consultants will retain the marked up prints. After final review and correction of the submittal, the Contractor shall send two corrected sets to the Architect, and one to each of the Architect's consultants involved with the particular section of work.

### **§ 3.13 USE OF SITE**

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

**§ 3.13.1** 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 materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.



**§3.13.2** The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without written consent of the Owner.

**§3.13.3** Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision on the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of: (1) any area and buildings adjacent to the site or the Work or (2) the Building in the event of partial occupancy.

**§3.13.4** Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrance and parking areas other than those designated by Owner. Without limitation of any other provisions of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time.

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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

**§ 3.15.3** Prior to the Architect's inspection for Submittal Completion the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roof, 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.

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### § 3.18 INDEMNIFICATION

**§ 3.18.1** To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Owner, the Board of Trustees of Owner, all elected officials, employees and agents of Owner and of any of the above mentioned parties (the "Indemnified Parties") from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty, or cause of action (including attorneys' fees), directly or indirectly arising out of, resulting from, or related to (in whole or in part), (1) the Work performed hereunder, (2) the Contract, or (3) the act or omission of Contractor, a Subcontractor, or an individual, partnership, joint venture, corporation or other entity (a) directly or indirectly employed by Contractor or a Subcontractor, or (b) for whose acts or omissions Contractor or a Subcontractor may be liable (excluding property damage to the Work itself, covered by Owner's all-risk builder's risk insurance, subject to Contractor's liability for any deductible amounts thereunder). The obligations of Contractor under this indemnification shall apply to all matters except those arising solely from the wanton and willful negligence or the malicious acts or omissions of Owner. Further, the obligations of Contractor under this indemnification shall not extend to the liability of Architect, its agents, or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, (2) the giving of or failure to give directions or instructions by Architect, its agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage, or (3) any matter prohibited by Section 130.002, Texas Civil Practice and Remedies Code. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding, or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, Owner shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and Owner, and Owner shall have reasonably concluded that there may be legal defenses available to it that are different from, or additional to, or inconsistent with, those available to Contractor, then Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification Section, then Owner, at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Contractor to Owner, together with interest on the same from the date any such expense was paid by Owner until reimbursed by Contractor, at the rate of interest provided to be paid on judgments by the law of the jurisdiction to which the interpretation of the Contract is subject. The obligations of Contractor under this Section shall survive the expiration of the Contract and specifically shall survive the limitations contained in Section 15.1 hereof.

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

### § 3.19 SUBSTITUTIONS OF PRODUCTS AND SYSTEMS, "OR EQUAL" BRANDS

**§ 3.19.1** The materials, products and the systems covered by these specifications have been selected as a standard because of quality, particular suitability, or record of satisfactory performance. It is not intended to preclude the use of equivalent or better materials, products or systems provided that it meet the requirements of the particular project and have been approved in an addendum as a substitution prior to the submission of bids. If prior written approval in an addendum has not been obtained, it will be assumed that the Bid is based upon the materials, products, and systems described in the Bidding Documents and no substitutions will be permitted, except as provided hereinafter.

**§ 3.19.2** If, after award of contract, the Contractor or one of his Subcontractors or Suppliers determines 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 the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate modification.

### § 3.20 RECORD DRAWINGS

**§ 3.20.1** At the completion of the project, the Contractor shall submit one complete set of blue lines showing all changes and routing of utilities made during construction, excluding Architect made CAD changes, to the Architect. Drafting

shall be legible to the Architect's satisfaction. The Contractor shall pay for the cost of the required recording/drafting. The record set shall be kept up to date on a daily basis and the Architect shall review its status at the project meetings. The Architect shall furnish the Contractor with a blueline set at contract award which shall have all Addenda incorporated. The Owner will pay for the printing of the blueline set. The Architect will incorporate any record information into the construction (CAD) documents and provide the Owner with an electronic copy of the record information on the Construction documents that have all bid and construction changes incorporated. The cost for incorporating the record information into the CD will be paid for by the Owner. The Architect will transmit the electronic CD to the Owner with a copy of the transmittal to the Contractor's construction manager.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

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

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the former Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

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

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

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect shall not have control over or charge of and shall not be responsible for safety precautions and programs in connection with the Work. Architect shall be responsible for promptly notifying Contractor of the failure of Contractor, Subcontractors or any other persons performing any of the Work, in failing to use proper construction means, methods, techniques, sequences, procedures, safety precautions and programs, but only to the extent Architect becomes aware of, or should, exercising due professional diligence, be aware of, same. Architect shall also promptly notify Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

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

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

§ 4.2.6 The Architect has authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

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

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

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

§ 4.2.13 DELETED.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.



## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, but no later than 10 days prior to the submittal date for the Contractor's first Application for Payment shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. Failure of the Contractor to submit the subject names in a timely manner may delay processing of the Contractor's Application for Payment.

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

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.

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

### § 5.3 SUBCONTRACTUAL RELATIONS

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

**§ 5.3.1** All subcontracts shall be in written form and shall specifically provide that Owner is an intended third-party beneficiary of the subcontract.

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

**§ 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.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

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

### **§ 6.2 MUTUAL RESPONSIBILITY**

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

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

**§ 6.2.3 DELETED.**

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

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

**§ 6.3 OWNER'S RIGHT TO CLEAN UP**

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

**ARTICLE 7 CHANGES IN THE WORK**

**§ 7.1 GENERAL**

**§ 7.1.1** Changes in the Work may only 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 and is subject to the approval of the 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 and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect and is subject to the approval of the Owner.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 and 9.7, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

**§ 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** Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited, to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

**§ 7.2.3** Contractor shall keep and periodically submit to Owner copies of a log for all Change Orders.

**§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

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



§ 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 in writing between the Owner and the Contractor;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon in writing between the Owner and the Contractor;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, in each case in writing between the Owner and the Contractor; or
- .4 As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit not to exceed a total maximum of **fifteen percent (15%)** for all Work, and further limited to as follows, not to exceed five percent (5%) for Work done by Contractor's employees and **ten percent (10%)** of such Work's actual cost to be apportioned between any and all Subcontractors and Sub-subcontractor. "Actual cost" does not include any item that could be deemed to be a general conditions cost or overhead, such as, but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### **§ 7.4 MINOR CHANGES IN THE WORK**

The Architect has authority after having obtained Owner's approval to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### **ARTICLE 8 TIME**

#### **§ 8.1 DEFINITIONS**

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

**§ 8.1.1.1** The Work shall be fully completed within the time limit and/or date stated in the Contract between Owner and Contractor.

**§ 8.1.1.2 Liquidated Damages:** If the Contractor should fail to fully complete the Work within the stated time (subject however to extension of time duly granted in the manner and for the causes specified in the General Conditions), Contractor shall be charged by and shall pay to Owner, as liquidated damages, the sum specified in Article 3 of the AIA document A101 – 2017 by and between Owner and Contractor to which this document is attached as Exhibit A per calendar day that the Work remains incomplete beyond the time fixed for completion. Contractor hereby agrees that from the nature of the project it would be impracticable and extremely difficult to fix the actual damage that would or will be suffered in the event that Contractor should fail to fully complete the Work by the time limit or date stated and the amount of the liquidated damages are fair and reasonable. The parties agree that the liquidated damages are a reasonable forecast of just compensation for the harm done to Owner that would be caused by Contractor's failure to timely complete the Work. Contractor agrees that the amount of liquidated damages due Owner may be deducted by Owner from any monies that might otherwise be or become payable to Contractor.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

#### **§ 8.2 PROGRESS AND COMPLETION**

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

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

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

#### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes

beyond the Contractor's control; or by delay authorized by Owner pending mediation, or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor or that are otherwise the responsibility of Contractor and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

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

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contractor shall not be entitled to damages of any type for delays caused by Owner, his servant, agents, employees, or separate Contractors hired or retained by Owner. Contractor may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. 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 intentional interference with Contractor's performance of the Work.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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

**§ 9.1.1 Commitment of Current Revenues Only.** As reflected in Section 4.5 of the modified AIA document A101 – 2017 Edition by and between Owner and Contractor to which this document is attached as Exhibit A, in the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as Architect may direct or as required by Owner. This schedule, when approved by Architect and Owner, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment. All items with entered values will be transferred by Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directives values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by Architect and approved by Owner. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed, and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Any

allowances included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall be accompanied by a certification by an office of Contractor to the effect that:

There are no known mechanics', materialman's or laborers' liens or claims, or any other liens or claims, legal or equitable, contractual, statutory, or constitutional, outstanding or known to exist at the date of this Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics', materialman's or laborers' lien or claim, or any other lien or claim, legal or equitable, contractual, statutory, or constitutional, on the Work; and waivers and releases from all Subcontractors, laborers, and material men for Work done and materials furnished have been obtained in such form as to constitute an effective waiver and release of all such liens and claims under the laws of the state within which the Project is located and shall be delivered to Architect together with Contractor's waiver and release of liens and claims at the time of submission of the Application for Payment.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing by the Owner and Surety. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

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

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and on all other information available to Architect including, without limitation, the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and



inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified and that the aggregate amount theretofore paid to Contractor plus any applicable retention does not exceed the value of the completed portion of the Work. 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, or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents.

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

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

**§ 9.5.4** Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion within 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.

#### **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

**§ 9.6.2** The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

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

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

**§ 9.6.7** DELETED.

### **§ 9.7 FAILURE OF PAYMENT**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Contract, including but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7 pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

**§ 9.7.1** If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner sole discretion, elect either to (i) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (ii) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which 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 (which Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of issuance of the certificate of final payment by Architect unless otherwise provided in the Certificate of Substantial Completion. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner and/or Owner's employees and if applicable, the public, could occupy the building on that date and the completing of the Work by Contractor would not materially interfere or hamper Owner's or Owner's employees and if applicable, the public, (or those claiming by, through, or under Owner) from normal County operations. As a further condition of Substantial Completion acceptance, Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. If Contractor requests a Substantial Completion review, and Architect, after performing the Substantial Completion review, finds that the Project was not ready for the Substantial Completion review, then Contractor shall pay the Architect's fees for any additional Substantial Completion reviews.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met: (1) All inspections by governmental authorities have jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect. (2) All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

**§ 9.8.7** After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In this report, the Contractor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

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

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



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

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 faulty or defective Work appearing after Substantial Completion.

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

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

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

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

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

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

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

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

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

#### **§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

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

#### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons

or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 DELETED.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

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

§ 10.3.6 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. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES**

§ 11.1.5.1 Contractor shall carry and keep in full force for the duration of the project the following Coverage.

| <b>Coverage</b>                     | <b>Minimum Amounts and Limits</b>                         |
|-------------------------------------|---|
| <b>Worker's Compensation</b>        |   |
| Employer's Liability:               | Statutory Limits  |
| Bodily Injury by Accident           | \$500,000.00/each accident                                |
| Bodily Injury by Disease            | \$500,000.00/each employee                                |
| Bodily Injury by Disease            | \$500,000.00/Policy Limit                                 |
| <b>Commercial General Liability</b> |   |
| Bodily Injury/Property Damage       | \$1,000,000.00 per occurrence<br>\$2,000,000.00 aggregate |

(Premises Operations, Independent Contractors, Product/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage).

**Comprehensive Automobile Liability**      \$1,000,000.00 Combined Single  
Limit per Occurrence

Auto liability insurance shall be on a standard form written to cover all owned, hired, and non-owned automobiles. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insured, contain cross-liability and severability of interest endorsements, and state that this insurance is primary insurance as regards to any other insurance carried by the Indemnified Parties (see Section 3.18).

§11.1.5.2 All policies shall contain special endorsements to include:

1. The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in Section 3.18 (Indemnified Parties);
2. Wavier of Subrogation in favor of Owner under the Worker's Compensation and Employer's Liability policies.
3. A statement that a notice shall be given to Owner by certified mail thirty (30) days prior to cancellation or upon any material changes in coverage.
4. Contain cross-liability and severability of interest endorsements;
5. state that this insurance is primary insurance in regard to any other insurance carried by an Indemnified Party (see Section 3.18);

.6 the following coverage:

- a. Premises/Operations;
- b. Independent Contractors;
- c. Completed Operations for a period of two years following the acceptance of Contractor's Work;
- d. Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor, Broad Form Property Damage, and Personal Injury Liability with employee and contractual exclusions removed);
- e. Deletion of exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards;
- f. Personal Injury Liability with the contractual exclusions removed;
- g. Cross Liability Endorsement.

#### §11.1.5.6 Umbrella Excess Liability Insurance

|                                   |   |
|-----------------------------------|---|
| Bodily Injury and Property Damage | \$2,000,000.00 per occurrence<br>\$2,000,000.00 aggregate |
|-----------------------------------|---|

This policy shall be written on an umbrella excess basis above, the coverage described in this Article 11. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insureds. The policy shall contain cross-liability and severability of interest endorsements and shall state, as regard the Indemnified Parties that the insurance is primary insurance as to any other insurance carried by any Indemnified Party. The policy shall be endorsed to provide the defense coverage obligation.

§11.1.6 Further, Contractor shall require all Subcontractors to carry similar insurance coverage and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to Owner for approval before any Work commences.

§11.1.7 In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all claims for which the required insurance would have provided coverage.

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

##### §11.1.8.1 Definitions:

- .1 Certificate of coverage ("certificate") - A copy of a 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 person's or entity's employees providing services on a project, for the duration of the project.
- .2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- .3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person 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 which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.



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

**§11.1.8.3** The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

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

**§11.1.8.5** The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

- .1 a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- .2 no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

**§11.1.8.6** The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

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

**§11.1.8.8** 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.

**§11.1.8.9** 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, Section 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 year thereafter;
- .6 notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- .7 contractually require each person with whom it contracts, to perform as required by paragraphs .1 - .7, with the certificates of coverage to be provided to the person for whom they are providing services.

**§11.1.8.10** By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the 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.

**§11.1.8.11** The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

## **§ 11.2 OWNER'S LIABILITY INSURANCE**

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

**§ 11.2.1** 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 or 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.

**§11.2.2** 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 Article 11.

## **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** 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 others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. The policy must also name its subcontractors and the Owner as additional insured, as their respective interests may appear. 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. The policy must have the following endorsement: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.3.1.1.1** For any claim made against Contractor's Builder's Risk Insurance, the deductible shall not exceed \$2,500.00 for a Contract Sum of less than \$4 million. For a Contract Sum of \$4 million or more, the deductible shall not exceed \$5,000.00.

**§ 11.3.1.1.2** 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 Section 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.

**§ 11.3.1.1.3** 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.

**§ 11.3.1.2 DELETED.**

**§ 11.3.1.3 DELETED.**

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

**§ 11.3.1.5** Partial occupancy or use shall not affect the validity or coverage of property insurance.

**§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.**

**§ 11.3.3 LOSS OF USE INSURANCE DELETED.**

**§ 11.3.4 DELETED.**

**§ 11.3.5 DELETED.**

**§ 11.3.6 DELETED.**

### **§ 11.3.7 WAIVERS OF SUBROGATION**

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 Article 11 or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as 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.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** DELETED.

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

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The 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 Subchapter A of Chapter 3503 of the Texas Insurance Code.

**§11.4.1.1** 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.

**§11.4.1.2** 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.

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

**§ 11.4.3** 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 on or after the date of execution of the Contract but prior to the date of the notice to proceed. 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.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 UNCOVERING OF WORK**

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

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs

and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## **§ 12.2 CORRECTION OF WORK**

### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

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

### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work (unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties), or within such longer period of time as may be prescribed by law or in equity, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This corrective period 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 performance of the Work. Corrective Work shall be warranted to be free from defects for a period equal to the longer of six (6) months after the completion of the corrective Work or one (1) year after the Date of Substantial Completion (subject to extension as previously described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable special warranty, if applicable, required by the Contract Documents. Any defect in such Work shall be corrected again by Contractor promptly upon notice of the defect from Owner. This obligation under this Section 12.2.2.1 shall survive acceptance of the Work under the Contract and termination of the Contract by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

**§ 12.2.2.4** Just before the termination of the various guarantee periods, Contractor shall accompany Owner's agent and Architect on an inspection tour of the building and shall note any defects and shall start remedying these defects within ten (10) days of the inspection tour and shall prosecute the Work without interruption until accepted by Owner and Architect, even though such prosecution should extend beyond the limit of the guarantee period.

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

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused in whole or in part by the Contractor's correction or removal of Work that is defective or otherwise 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 or under law or in equity. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

### § 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice or if delivered by facsimile to the offices of the person or corporation for which it was intended. Facsimiles received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity or by any other agreement, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.

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

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. Architect or Owner may at any time request and receive from Contractor satisfactory evidence that materials, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.

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



**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, or reveal faulty or otherwise defective Work, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, Contractor shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by Contractor's failures, including, without limitation, those costs of repeated and additional procedures and compensation for Architect's services and expenses of Owner's personnel and consultant fees and expenses. Such costs shall be paid by Contractor within ten (10) days of receipt of invoice from Owner with supporting data attached.

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

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

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

### **§ 13.6 INTEREST**

An overdue payment bears interest at the legal rate established by the Texas Government Code, currently in Section 2251.025, or in the event no rate is so established, at the rate of one percent (1%) each month. Any such payment shall be deemed overdue on the thirty-first (31<sup>st</sup>) day after Owner receives an invoice from Contractor.

### **§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

**§ 13.8.1** The Contractor shall maintain policies of employment as follows: "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."

**§13.8.1.1** 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.

### **§13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT**

**§13.9.1** 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.

**§13.9.2** 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.

**§13.9.3** Final payment shall not be made until this letter of certification has been received.



## 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 sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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

*(Paragraphs deleted)*  
stopped.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed in accordance with the Contract Documents.

§ 14.1.4 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Sections 14.1.1 and 14.1.2.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials and equipment;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or
- .6 otherwise does not fully comply with the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 To the extent the costs of completing Work, including compensation for additional professional services and expenses, exceed those costs that would have been payable to Contractor to complete the Work except for

Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by Owner will be determined by Owner and confirmed by Architect.

**§14.2.5** In addition to Owner's right to remove Contractor from any part of Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of Work or any subcontract or all remaining Work for any reason whatsoever by giving seven (7) days' prior written notice to Contractor specifying the part of Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of Work not terminated. If any part of Work or subcontract is so terminated, Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract including reasonable demobilization and cancellation charges provided said Work is authorized in advance by Architect and Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

**§14.2.6** Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Section 14.2.5.

**§14.2.7** Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.2.5 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 14.2.5.

### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

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

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

### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, without any overhead or profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right adjustment, or interpretation of the Contract Terms, payment of money, extension of 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. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be by written notice.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Said written notice of claims shall state specifically the reason for the claim, the date or dates of the cause or causes of the claim, and if any extension of time is requested, the number of days of extension requested.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such claim shall be value unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if Architect determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

*(Paragraph deleted)*

Contractor shall not be entitled to claims for additional time and/or increase in Contract Price due to a problem or non-performance of a subcontractor.

**§ 15.1.7** In the event the Contractor fails to achieve substantial completion by the date indicated in the Contract, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount as stated in Section 3.1.1 of the modified AIA document A 101 – 2007 Edition by and between Owner and Contractor to which this document is attached as Exhibit A per day until the Work is substantially completed. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult and in no sense be considered a penalty.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## § 15.2 INITIAL DECISION

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

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

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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

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

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

§ 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 DELETED.

## § 15.3 MEDIATION

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

§ 15.3.3 The parties shall share the mediator's fee. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

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.

**OWNER:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_

\_\_\_\_\_  
Date

**CONTRACTOR:**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain

*(Paragraphs deleted)*




|   |                | South Texas Build<br>Con LLC | Argio Roofing &<br>Construction, LLC             | CS ADVANTAGE<br>USAA INC                 | G&G<br>CONTRACTORS<br>(RG Enterprises,<br>LLC) | AMERICAN<br>CONTRACTING USA<br>INC |                        |
|---|----------------|------------------------------|--|--|--|------------------------------------|------------------------|
| <b>Rank</b>   |                | <b>5</b>                     | <b>2</b>   | <b>1</b>                                 | <b>4</b>                                       | <b>3</b>                           |                        |
| <b>Price</b>  | Maximum points | <b>100.00</b>                | <b>77.18</b>                                     | <b>90.11</b>                             | <b>93.49</b>                                   | <b>78.28</b>                       | <b>88.76</b>           |
| Base Bid (LI1)  |                | 60                           | 60   | 57                                       | 58   | 51                                 | 51                     |
|   |                | \$595,500.00                 | \$625,700.00                                     | \$611,000.00                             | \$706,005.00                                   | \$704,000.00                       |                        |
| <b>Offeror's experience and reputation</b>  |                | <b>23</b>                    | <b>5.68</b>                                      | <b>18.01</b>                             | <b>21.012</b>                                  | <b>14.176</b>                      | <b>22.512</b>          |
| Three (3) K-12 reference forms (LI7)  |                | 1.5                          | 0  | 0.5                                      | 0  | 0                                  | 1                      |
| <i>Rating of 2 or better; plus similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>           |                |                              | <i>0 out of 3 (1 not size; 1 incorrect form)</i> | <i>1 out of 3 (1 non ISD; 1 no info)</i> | <i>0 out of 3</i>                              | <i>1 out of 3 (1 no info)</i>      | <i>2 out of 3</i>      |
| Three (3) Supplier Reference Letters (LI18)   |                | 1.5                          | 0  | 0  | 1  | 1.5                                | 1.5                    |
|   |                |                              | <i>None provided (incorrect proj)</i>            | <i>None provided</i>                     | <i>2 out of 3</i>                              |                                    |                        |
| Claims, judgments, arbitration proceedings or suits (LI8)   |                | 1                            | 1  | 1  | 1  | 1                                  | 1                      |
| Staff experience (industry) (LI15)  |                | 2                            | 2  | 2  | 2  | 2                                  | 2                      |
| Staff experience (firm) (LI15)  |                | 2                            | 2  | 2  | 2  | 2                                  | 2                      |
| Three (3) current or past K-12 projects (LI10)  |                | 14                           | 0  | 11.66                                    | 14   | 7                                  | 14                     |
| <i>Similar scope and size (2.332 pts for scope; 2.332 pts for size per reference)</i>                                   |                |                              | <i>None listed</i>                               | <i>3 scope; 2 size</i>                   | <i>3 scope; 3 size</i>                         | <i>1 scope; 2 size</i>             | <i>3 scope; 3 size</i> |
| Current or past Non K-12 projects (LI11)  |                | 1                            | 0.68   | 0.85                                     | 1  | 0.68                               | 1                      |
| <i>Similar scope and size (0.5 pts for scope; 0.5 pts for size per reference)</i>                                       |                |                              | <i>3 scope; 1 size</i>                           | <i>3 scope; 2 size</i>                   | <i>3 scope; 3 size</i>                         | <i>2 scopes; 2 sizes</i>           | <i>3 scope; 3 size</i> |
| <b>Quality of the offeror's goods or services</b>   |                | <b>2</b>                     | <b>1</b>   | <b>2</b>                                 | <b>1</b>                                       | <b>1</b>                           | <b>2</b>               |
| Repeat business for similar scope/size (LI12)   |                | 1                            | 1  | 1  | 1  | 1                                  | 1                      |
| Current or past MISD projects (LI9)   |                | 1                            | 0  | 1  | 0  | 0                                  | 1                      |
| <b>The impact on the ability of the district to comply with rules relating to historically underutilized businesses</b> |                | <b>1</b>                     | <b>1</b>   | <b>1</b>                                 | <b>1</b>                                       | <b>1</b>                           | <b>1</b>               |
| <b>Offeror's safety record</b>  |                | <b>7</b>                     | <b>4.5</b>                                       | <b>6</b>                                 | <b>6</b>                                       | <b>4.5</b>                         | <b>6.5</b>             |
| *OSHA Form 300 Log (LI20)   |                | 1.5                          | 0  | 1  | 1.5  | 0                                  | 1.5                    |
|   |                |                              | <i>0 out of 3</i>                                | <i>2 out of 3</i>                        |  | <i>None provided</i>               |                        |
| Safety program manual and/or procedures. (LI21)   |                | 2                            | 2  | 2  | 2  | 2                                  | 2                      |
| Drug/alcohol prevention policy and/or procedures. (LI22)  |                | 1                            | 1  | 1  | 1  | 1                                  | 1                      |
| "Workers Compensation Experience Rating" (LI19)   |                | 1.5                          | 0.5  | 1  | 0.5  | 0.5                                | 1                      |
|   |                |                              | <i>1 out of 3</i>                                |  | <i>1 out of 3</i>                              | <i>1 out of 3</i>                  | <i>2 out of 3</i>      |
| Frequency of safety inspections (LI13)  |                | 1                            | 1  | 1  | 1  | 1                                  | 1                      |
| <b>Whether the offeror's financial capability is appropriate to the size and scope of the project</b>                   |                | <b>3</b>                     | <b>1</b>   | <b>2</b>                                 | <b>2</b>                                       | <b>3</b>                           | <b>2</b>               |
| Financial Statement (LI24)  |                | 1                            | 0  | 1  | 1  | 1                                  | 1                      |
|   |                |                              | <i>2019</i>                                      |  |  |                                    |                        |
| Dun & Bradstreet risk indicator (LI25)  |                | 1                            | 0  | 0  | 0  | 1                                  | 0                      |
|   |                |                              | <i>Rating report missing</i>                     | <i>N/A</i>                               | <i>Rating report missing</i>                   |                                    | <i>N/A</i>             |
| Surety Letter (LI23)  |                | 1                            | 1  | 1  | 1  | 1                                  | 1                      |
| <b>Any other relevant factor specifically listed in the CSP</b>   |                | <b>4</b>                     | <b>4</b>   | <b>4</b>                                 | <b>4</b>                                       | <b>4</b>                           | <b>4</b>               |
| On-time project completion (LI9-11)   |                | 1                            | 1  | 1  | 1  | 1                                  | 1                      |
| General Contractor or Joint Venture (LI14)  |                | 1                            | 1  | 1  | 1  | 1                                  | 1                      |
| Projects currently in progress. (LI16)  |                | 1                            | 1  | 1  | 1  | 1                                  | 1                      |
| Project schedule/timeline (LI17)  |                | 1                            | 1  | 1  | 1  | 1                                  | 1                      |



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** 

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



214  
**Superintendent of Schools**

 **AIA® Document A101® – 2017**

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

**AGREEMENT** made as of the 28<sup>th</sup> day of February in the year 2022  
*(In words, indicate day, month and year.)*

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

McALLEN INDEPENDENT SCHOOL DISTRICT  
2000 North 23<sup>rd</sup> Street  
McAllen, Texas 78501

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

HELLAS CONSTRUCTION, INC., a Texas for-profit corporation  
12000 West Parmer Lane  
Austin, Texas 78613

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

RFCQ 2022-1037 Synthetic Turf for Baseball and Softball Fields at McAllen High School, McAllen Memorial High School, and James Nikki Rowe High School (Owner Contract No. 2022-179)

Location 1:  
McAllen High School  
2021 N. La Vista Avenue  
McAllen, Texas 78501

Location 2:  
McAllen Memorial High School  
101 E. Hackberry Avenue  
McAllen, Texas 78501

Location 3:  
James Nikki Rowe High School  
2101 N. Ware Road  
McAllen, Texas 78501

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

Javier Hinojosa, a sole proprietor doing business as Javier Hinojosa Engineering  
416 E. Dove Avenue  
McAllen, Texas 78504

**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.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Contractor agree as follows.



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## TABLE OF ARTICLES

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### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), all sections of the Project Manual, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

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**§ 3.3 Substantial Completion**

**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute and achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information.)

[ X ] Not later than two hundred seventy ( 270 ) calendar days from the date of commencement of the Work.

[ ] By the following date:

Final Completion shall be 30 calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|
| N/A             |                             |

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Five Million Two Hundred Twenty-Eight Thousand Nine Hundred Twenty Dollars and Zero Cents ( \$ 5,228,920.00 ), subject to additions and deductions as provided in the Contract Documents. The Contract Sum consists of two portions, the budgeted amount Four Million Nine Hundred Twenty-Eight Thousand Nine Hundred Twenty of Dollars and Zero Cents (\$4,928,920.00) and a contingency of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) as specified in Section 4.3 below. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Contractor acknowledges and agrees that the contingency portion of the Contract Sum set forth in Section 4.3 shall not be due or payable unless and to the extent that Owner authorizes such expenditure in writing If the Owner’s Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

**§ 4.2 Alternates**

**§ 4.2.1** Alternates, if any, included in the Contract Sum:

| Item* | Price |
|-------|-------|
| n/a   |       |

**§ 4.2.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

| Item | Price | Conditions for Acceptance |
|------|-------|---------------------------|
|------|-------|---------------------------|

**§ 4.3** Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

| Item                | Price        |
|---------------------|--------------|
| Owner's Contingency | \$300,000.00 |

**§ 4.4** Unit prices, if any:

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

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

**§ 4.5** Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

**§ 4.5.1 Substantial Completion.** Owner and Contractor recognize that time is of the essence in this Agreement and that Owner will suffer financial loss if the Work is not completed within the time specified in Article 3, plus any extension thereof in accordance with Article 8 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner One Thousand Five Hundred Dollars and Zero Cents (\$1,500.00) per calendar day for each day after the Substantial Completion date noted in Article 3 until the Work is substantially complete.

**§ 4.5.2 Final Completion.** In addition, timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Work within 30 calendar days of the Substantial Completion date (subject to adjustment of such date in accordance with the terms hereof). It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Contractor's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Contractor and Owner also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring such proof, Owner and Contractor agree that as liquidated damages for delay (but not as penalty) Contractor shall pay Owner Five Hundred Dollars and Zero Cents (\$500.00) per calendar day for each day after the Final Completion date noted in Article 3 until the Work is substantially complete.

**§ 4.5.3** *It is expressly understood that the said sum per day set forth in this Section 4.5 is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty.* It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from any Payment made to the Contractor any sums due from Contractor to Owner pursuant to Section 4.5 above.

**§ 4.6** Other:

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

**§ 4.6.1 Commitment of Current Revenues Only.** In the event that during any term hereof, the governing body of any local government party does not appropriate sufficient funds to meet the obligations of such party under this Agreement, then any party may terminate this Agreement upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each government party hereto pursuant to the provisions of Texas Local Government Code §271.903.



## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the fifth day following approval by the Board of Trustees or as otherwise required by applicable law .

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum less any unused Owner's contingency among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Owner and the Architect may require. This schedule of values, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

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

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified to the extent approved by the Owner in writing, as provided in Section 7.3.9 of AIA Document A201.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201 or amounts certified by the Architect and disputed by the Owner; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner shall withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

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Five percent (5%) if the amount set forth in Section 4.1 above for the Contract Sum is at least Four Hundred Thousand Dollars (\$400,000.00) and ten percent (10%) if such amount is less than Four Hundred Thousand Dollars (\$400,000.00).

*(Paragraphs deleted)*

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

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

None.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

Retainage on any incomplete Work and Unsettled claims.

*(Paragraph deleted)*

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

§ 5.1.10 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

§ 5.1.11 If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claim.

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum minus disputed sums, authorized deductions and liquidated damages, shall be made by the Owner to the Contractor after

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201;
- .3 the Contractor has provided the following documents:
  - .1 Written certifications that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout;
  - .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](http://www.tea.state.tx.us/school.finance/facilities/cert_2004.pdf);
  - .4 Contractor's warranties, organized as required elsewhere in the Contract Documents;

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- .5 Maintenance and Instruction Manuals;
- .6 Owner's Final Completion Certificate; and
- .7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepi, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes;
- .4 a final Certificate for Payment has been issued by the Architect; and
- .5 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, and upon acceptance by the Owner and Architect, and after satisfactory evidence has been given by the Contractor that all of the Contractor's bills have been paid and the entire Project is free from liens.

**§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest pursuant to Texas Government Code §2251.025. *(Insert rate of interest agreed upon, if any.)*

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

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

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201.

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*(Paragraphs deleted)*

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 All references to AIA Document A201-2017, AIA Document A201-2007, AIA Document A201 or the A201, shall mean to the modified A201-2007 attached hereto as Exhibit "A". Similarly, references to AIA Document A101-2017, AIA Document A101-2007 or to the A101 shall mean to this A101-2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:  
*(Name, address, email address, and other information)*

Mr. Ruben Trevino  
McAllen Independent School District  
4309 Warrior Drive, Bldg. B  
McAllen, TX 78501

§ 8.3 The Contractor's representative:  
*(Name, address, email address, and other information)*

Mr. Saulo Hernandez  
Hellas Construction, Inc.  
12000 West Parmer Lane  
Austin, Texas 78613  
Phone: (512) 250-2910  
Email: \_\_\_\_\_

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

### § 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in Article II of the AIA Document A201. The Contractor's insurance certificates are attached hereto as Exhibit "D".

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A201. The original bonds required pursuant to Section 11.4 of the A201 and this Section 8.5 are attached to the Owner's execution original of this Agreement as Exhibit "C" with a copy of the bonds attached as Exhibit "C" to the Contractor's execution original.

*(Paragraphs deleted)*

§ 8.7 Other provisions:

§ 8.7.1 The Agreement 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 shall be in Hidalgo County, Texas.

§ 8.7.2 As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.

§ 8.7.3 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. As part of that responsibility, Contractor shall enforce the

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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.

§ 8.7.4 Contractor acknowledges that the Owner retained the party, if any, set forth above under "Architect" above to provide certain design, contract administration and/or other services for the Project, and may not have used an AIA document for the contract with such party. All references in the Contract Documents to the Architect shall be to the entity named on the first page as the "Architect". The parties acknowledge and agree that, notwithstanding any other provision in the Contract Documents, the Owner is not obligated to retain an architect for the Project and the Owner makes no representations about the party, if any, set forth above under "Architect" being an architect. In the event Owner did not designate a party above under "Architect, then Contractor acknowledges and agrees that Owner, through one or more employees who need not be architects, will be acting as the "Architect" as such term is used in this Agreement.

§ 8.7.5 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to 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 full name in a typeface large enough to be seen from a reasonable distance.

§ 8.7.6 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. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 8.7.7 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 of Owner.

§ 8.7.8 The Contractor may not assign its responsibilities, duties, obligations and rights under this Agreement, without the express written consent of the Owner. This does not prevent Contractor from engaging subcontractors to perform various phases of the Project, but Contractor shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 8.7.9 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

§ 8.7.10 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.

§ 8.7.11 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by Contractor of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by Owner of any of the covenants, conditions or agreements hereof to be performed by Contractor shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 8.7.12 Contractor stipulates that Owner is a political subdivision of the State of the Texas, and, as such, enjoys immunities from suit and liability as provided by the constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law.



§ 8.7.13 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract.

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

§ 8.7.15 Contractor and Owner agree that this Agreement may be executed electronically, but that neither party is required to execute electronically. Upon request by the other party hereto, a party that executed this Agreement electronically will provide to the other party an original of this Agreement that is manually signed by the authorized signatory who had executed the Agreement by electronic means.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 This executed AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A201™–2007, General Conditions of the Contract for Construction

*(Paragraphs deleted)*

(as modified and attached hereto as Exhibit "A")

*(Paragraph deleted)*

- .3 Drawings attached hereto as part of Exhibit "E"

| Number | Title | Date |
|--------|-------|------|
|--------|-------|------|

- .4 Specifications attached hereto as part of Exhibit "E".

| Section | Title | Date | Pages |
|---------|-------|------|-------|
|---------|-------|------|-------|

- .5 Addenda, if any (attached as part of Exhibit "E"):

| Number | Date | Pages |
|--------|------|-------|
|--------|------|-------|

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .6 The following Exhibits, which are attached hereto:

- |    |           |   |
|----|-----------|---|
| .1 | Exhibit A | The modified AIA Document A201–2007, General Conditions of the Contract for Construction. |
| .2 | Exhibit B | Contractor's Proposal   |
| .3 | Exhibit C | Payment and Performance Bonds   |
| .4 | Exhibit D | Contractor's Insurance Certificates   |
| .5 | Exhibit E | Plans and Specifications  |



*(Paragraph deleted)*

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

**OWNER:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
*(Table deleted)*

**CONTRACTOR:**

**HELLAS CONSTRUCTION, INC.**

By: \_\_\_\_\_

Printed Name: Saulo Hernandez

Title: EIT Director of Estimating

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain

(Table deleted)

## EXHIBIT A

to

Agreement dated February 28, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1037 Synthetic Turf for Baseball and Softball Fields at McAllen High School, McAllen Memorial High School, and James Nikki Rowe High School (Owner Contract No. 2022-179))

Modified AIA Document A201-2007 General Conditions of the Contract for Construction

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# AIA® Document A201® – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

RFCQ 2022-1037 Synthetic Turf for Baseball and Softball Fields at McAllen High School, McAllen Memorial High School, and James Nikki Rowe High School (Owner Contract No. 2022-179)

#### Location 1:

McAllen High School  
2021 N. La Vista Avenue  
McAllen, Texas 78501

#### Location 2:

McAllen Memorial High School  
101 E. Hackberry Avenue  
McAllen, Texas 78501

#### Location 3:

James Nikki Rowe High 2101 N. Ware Road  
McAllen, Texas 78501

### THE OWNER:

*(Name, legal status and address)*

McALLEN INDEPENDENT SCHOOL DISTRICT  
2000 North 23<sup>rd</sup> Street  
McAllen, Texas 78501

### THE ARCHITECT:

*(Name, legal status and address)*

Javier Hinojosa, a sole proprietor doing business as Javier Hinojosa Engineering  
416 E. Dove Avenue  
McAllen, Texas 78504  
4

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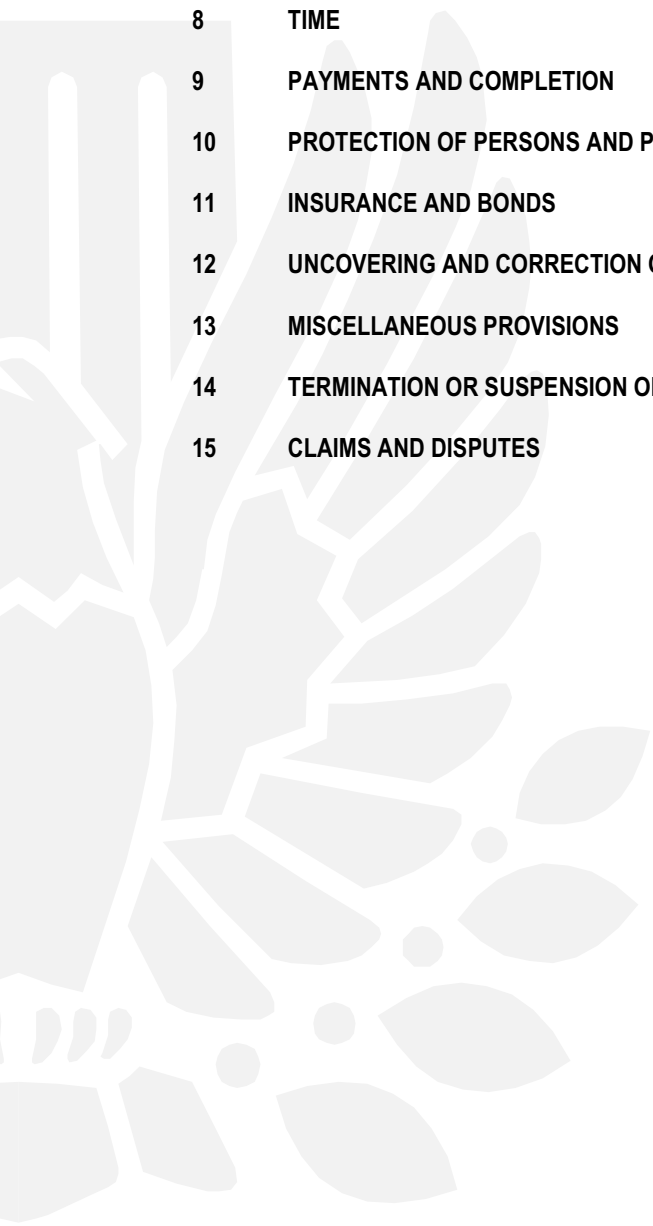
### ADDITIONS AND DELETIONS:

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.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect pursuant to Section 7.4. At the Owner's option, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

**§ 1.1.1.1** Contractor acknowledges and warrants that it has closely examined all the Contract Documents and is unaware of any instance where the documents are not suitable or are insufficient to enable the Contractor to complete the Work in a timely manner for the Contract sum, and that they include all Work, whether or not shown or described, which reasonably may be inferred or useful for the completion of the Work in full compliance with all applicable codes, laws, ordinances, and regulations.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor (except as provided in Sections 5.3 and 5.4 hereof), (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 of the Contractor under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.1.3.1** The Work shall include the obligation of the Contractor to visit the site of the Project before submitting a proposal. Such site visit shall be for the purpose of familiarizing Contractor with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing site conditions, access to the site, physical characteristics of the site and surrounding areas. It also includes all supplies, skill, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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



### § 1.1.7 INSTRUMENTS OF SERVICE

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

### § 1.1.8 INITIAL DECISION MAKER

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

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves have been referred to Owner and Architect by Contractor prior to the submission of bids and have been clarified by an Addendum issued to all bidders.

If such differences or conflicts were not called to Owner's and Architect's attention prior to submission of bids, Architect shall decide which of the conflicting requirements will govern based upon the following: the most stringent of the requirements will take precedence over the less stringent; the most expensive item will take precedence over the less expensive, and subject to the approval of Owner, Contractor shall perform the Work at no additional cost and/or time to Owner in accordance with the Architect's decision. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable as being necessary to produce the intended results.

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

- .1 The Agreement;
- .2 Addenda, with those of later date having precedence over those of earlier date;
- .3 Supplemental Conditions, if any;
- .4 The General Conditions of the Contract for Construction;
- .5 Specifications
- .6 Drawings, in the case of inconsistency between the Drawings and Specifications or within either document, not clarified by Addendum, the better quality or greater quantity of Work shall be included in the Contract Documents. Clarifications of the inconsistency will be accomplished with the Contractor and, if necessary, an appropriate reduction in the contract will be accomplished by Change Order. Figures given on drawings govern scale measurements. Large scale drawings take precedence over small scale drawings. Written words take precedence over numbers. Handwritten documents take precedence over typewritten documents. Existing conditions take precedence over drawings and specifications for dimensions and shall be verified by the Contractor. The Contractor proceeds at his own risk if conflicts or discrepancies are not resolved prior to the execution of the Work.

§ 1.2.1.2 If Work is required in a manner to make it impossible to produce Work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, Contractor shall request in writing an interpretation from Architect before proceeding with the Work. If Contractor fails to make such request, no excuse will thereafter be entertained for failure to carryout Work in the required manner or provide required guarantees, warranties, or bonds, and Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

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

§ 1.5.1 Instruments of Service, including the Drawings, Specifications, and other similar or related documents and copies thereof are furnished to Contractor for the purpose of performing the Work and are, and shall remain, the property of Owner and Owner will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's or Owner's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees of Owner, by majority vote, is the only representative of Owner, 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 of the contractual completion date. The Board shall designate, as appropriate, an authorized representative(s) to act on its behalf during the course of construction. In the event that an emergency changes the scope of the Work before the Board's next regular meeting or in order to facilitate and expedite the timely completion of the Work, the Board's authorized representative(s) may approve construction changes that do not exceed \$5,000.00 in increased costs. Any such changes shall be confirmed in writing between the Contractor and the Board's authorized representative(s) 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.

§ 2.1.2 DELETED.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics and legal limitations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. In connection with the foregoing, Contractor shall be solely responsible for locating (and shall locate prior to performing any Work) all utilities lines, telephone company, cable, sewer lines, water pipes, gas lines, and electrical lines, including without limitation, 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. Under this provision the Architect and Engineer are in no way relieved of their responsibilities outlined in the Contract or other attached contracts for identification of existing conditions.

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

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2 for use on this Project. All costs of reproduction are the responsibility of Contractor.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's or, if applicable landlord's, property by anyone claiming by, through, or under Contractor, or disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3 and any delay resulting from such Work stoppage shall not extend any Milestone Date identified in the Contract for Construction or the required dates of Substantial or Final Completion.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**§ 2.4.1** The rights stated in Article 2 shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

## **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

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authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner in writing any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner in writing any nonconformity discovered by or made known to the Contractor as a request for design information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect and Owner.

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

§ 3.2.6 The Contractor shall make reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observation of work prior to the Contractor's field superintendent's personal inspection of the work and his determination that the work complies with the Contract Documents.

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

§ 3.2.8 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his Warranty, Contractor shall promptly

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notify the Architect in writing, providing substantiation for the position. Any necessary changes, including substitutions of materials, may only be accomplished by an appropriate Modification.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

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

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

**§ 3.3.4** Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors, and their agents and employees, and other persons performing portions of the Work under Contract Documents or other arrangements with Contractor.

**§ 3.3.5** Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the Work, including those with respect to the safety of persons and property and their protection from damages, injury, or loss. Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by Contractor, its Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of Owner or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of Contractor, its Subcontractor, or anyone directly or indirectly employed by them. The foregoing obligations of Contractor are in addition to Contractor's obligations under other provisions hereunder.

**§ 3.3.6** Contractor shall be responsible for inspection of portion of Work already performed under the Contract for Construction to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.7** Contractor has the responsibility to ensure that all material suppliers and Subcontractors, 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. Contractor shall coordinate its Work with that of all others on the Project, including of construction utilities.

**§ 3.3.8** Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work; report errors or inconsistencies to Owner and Architect before commencing Work; and, if applicable, review the placement of the buildings and permanent facilities on the site with Owner and Architect after all lines are staked out and before foundation Work is started. Contractor shall provide access to the Work for Owner, Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by Contractor or its Subcontractors on adjacent properties caused by construction as revealed by an improvements survey, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner (s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

**§ 3.3.9** Contractor shall verify at the Work site the measurements indicated on the Drawings and Specifications and shall establish correctly the lines, levels, and positions for the Work and be responsible for their accuracy and proper

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correlation with control lines, monuments, and data, as established by surveys furnished by Owner. Work shall be erected square, plumb, level, true to line and grade, in the exact plane and to the correct elevation and/or sloped to drain as indicated. To ensure the proper execution of its subsequent Work, Contractor shall measure all Work already in place (including but not limited to utilities and grades installed or prepared by others) and shall at once report to Architect and Owner any discrepancy between said Work and the Drawings and Specifications for the Work.

**§ 3.3.10** Any discrepancy or omission in the dimensions or elevations shown on the Drawings and Specifications or found in previous Work which may prevent accurate layout or construction of the Work, shall immediately be reported by Contractor to Owner and Architect. If Contractor performs, permits, or causes performance of any Work when Contractor knows or reasonably should have known that such discrepancy or omission exists, without first obtaining further instruction from Architect or Owner, Contractor shall bear any and all costs arising therefrom including, without limitation, the costs of correction thereof without increase or adjustment in the Contract Sum. Omissions from the Drawings or Specifications, or the misdescription of details of Work which are reasonably inferable in order to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve contractor from performing such omitted or mis-described details of the Work, and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications, at no additional cost to Owner.

**§ 3.3.11** Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner under the full-time supervision of an approved engineer or foreman. Contractor shall be liable for all property damage, including repairs and replacements of the Work and economic losses, which proximately result from the breach of this duty. Contractor shall advise Architect:

- .1 if a specified product deviates from good construction practices;
- .2 if following the Specifications will affect any warranties; or
- .3 any objections which Contractor may have with the Specifications.

Nothing contained in Section 1.1.3 shall alter the responsibilities established in this Section.

### **§ 3.4 LABOR AND MATERIALS**

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

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By making requests for substitutions based on Section 3.4.2, Contractor:

- .1 represents that Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that Contractor will provide the same warranty for the substitution that Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation for the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgments as an experienced Contractor to adopt and implement policies and practices designed to avoid Work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Section 8.3 hereof, Contractor shall be liable to Owner for all damages suffered by Owner.

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§ 3.4.4 Materials shall conform to manufacturer's standards in effect at the date of execution of the Agreement and shall be installed in strict accordance with manufacturer's directions. Contractor shall, if required by Owner or Architect, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips shall be submitted with bulk materials identifying thereon the source, and warranting quality and compliance with Contract Documents.

§ 3.4.5 When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents.

§ 3.4.6 When the manufacturer's name, patent numbers, underwriter's labels, model numbers or similar identifying marks are required, such markings shall be located as inconspicuously as possible.

### § 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of the best 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 faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 ALL WARRANTIES SHALL INCLUDE LABOR AND MATERIALS AND THE MANUFACTURER'S WARRANTY SHALL BE SIGNED BY SUBCONTRACTOR AND COUNTERSIGNED BY CONTRACTOR. ALL WARRANTIES SHALL BE ADDRESSED TO OWNER AND DELIVERED TO ARCHITECT UPON COMPLETION OF THE WORK AND BEFORE OR WITH THE SUBMISSION OF REQUEST FOR FINAL PAYMENT.

§ 3.5.3 Contractor shall issue in writing to Owner as a condition precedent to final payment a "general warranty" reflecting the terms and conditions of this Section 3.5 for all Work under the Contract.

§ 3.5.4 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after final completion of the entire Work unless a longer time is specifically called for in the specifications. The Contractor shall assign all components, equipment and fixture warranties to the Owner and will deliver all manuals to the Owner at the completion of construction.

§3.5.5 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to Owner.

§3.5.6 Warranties shall become effective on a date established by Owner and Architect in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties.

§3.5.7 If Architect considers it impractical, because of unsuitable test conditions or some other factors, to execute simultaneous final acceptance of all equipment, portions of properly installed and functioning equipment may be certified by Architect for final acceptance, subject to Owner's approval, when that portion of the system is complete and ready for operation as called for under Section 9.8.1.

§3.5.8 Contractor shall warrant for a period of twelve (12) months that the building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Contractor's control. Contractor shall, immediately upon notification by Owner of water penetration, determine the source of water penetration and, at its own expense, do any Work necessary to make the building(s)

watertight. Contractor shall also, at its own expense, repair or replace any other damaged material, finishes, and furnishings, damaged as a result of this water penetration, to return the building(s) to its (their) original condition.

**§3.5.9** In addition to the foregoing stipulations, Contractor shall comply with all other warranties referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

**§3.5.10** If for any reason Contractor cannot warrant any part of the Work using material or construction methods that have been specified, or shown, it shall notify Owner and Architect in writing before the Contract is signed, giving reasons, together with the name of product and data on a substitution it can warrant.

### **§ 3.6 TAXES**

The Contractor shall pay applicable sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

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

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall make application, 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, including without limitation, street openings, sidewalk, and other obstructions, access over public ways and storage necessary for proper execution and which are, legally required at the time bids are received or negotiations concluded.

**§3.7.1.1** 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 and state and local authorities, that require completion of documentation and/or acquisition of all permits for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during construction phase which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

- a. The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.
- b. The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, Inspection Fees and Plan Checking Fees; temporary utility charges, tap charges and water meter charges and any other similar fees assessed by jurisdictional authorities having control over the Project.
- c. The Owner shall pay fees payable to the Texas Department of Licensing and Regulations (TDLR) for document review relative to the Elimination of Architectural Barriers Act and the Architect will submit the documents to the TDLR for review and approval.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work (including, without limitation, the installation of any materials or equipment) that it knows or reasonably should have known would be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the

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Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner in writing an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or based on data provided to Contractor and by the Contractor's prior inspections, tests, reviews, and pre-construction services for the Project; or by the Contractors inspections, tests, reviews and pre-construction services that Contractor had the opportunity and obligation to make in connection with the Project but did not do so.

**§ 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, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

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

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness. If a decision is needed to avoid a delay, Contractor shall notify Architect and Owner in writing sufficiently in advance of needed date to allow reasonable time for selections to be made.

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Architect, unless the superintendent leaves the employment of the Contractor. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner or Architects object to any nominated superintendent. Such approval by the Owner shall not be unreasonably withheld.

**§ 3.9.3 DELETED.**

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### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) days and submitted to Architect with Contractor's Applications for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original schedule. If any schedule submitted sets such a date for Substantial Completion for the Work or any phase of the Work beyond the date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to Architect and Owner for their review and approval a narrative description of the means and methods that Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the schedule.

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

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

§ 3.10.4 The 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. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and cost to a minimum. The construction schedule shall be in a detailed format satisfactory to the Owner and the Architect and shall also:

- .1 provide a graphic representation of all activities and events that will occur during performance of the Work;
- .2 identify each phase of construction and occupancy; and
- .3 set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents hereinafter referred to as Milestone Dates.

§ 3.10.5 The Owner shall have the right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any rescheduling of performance of the Work under this Section 3.10.5 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1 and an equitable adjustments in the Contract Sum, if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, (2) such rescheduling is required for the convenience of the Owner and is not attributable to any act of omission of Contractor, and (3) if Owner agrees to the Contract Sum adjustment prior to any rescheduling.



### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections (all changes and selections to be approved by Owner and Architect in advance) made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 At the Date of Substantial Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to Architect for submittal to Owner: Record Drawings showing the field changes and selections (all changes and selections to be approved by Owner and Architect in advance) affecting the general construction, mechanical, electrical, plumbing, and all other Work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on a set of reproducible prints of Architect's Drawings obtained and paid for by Contractor. Contractor shall maintain at the job site one (1) set of Architect's Drawings and indicate thereon each field change as it occurs. The Contractor shall post all Addenda on Construction Documents prior to commencing work on the site.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent re-submittal. Additional service charges as outlined in Section 3.2.7 may be charged by the Architect in this event.

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop

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

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

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

**§ 3.12.11** The Contractor shall submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least 30 days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, the Contractor shall submit all Samples in adequate time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall be submitted to the Architect within four weeks of the date of the Contract for construction.

**§3.12.12** The Contractor shall submit the number of copies of Shop Drawings, Product Data, Samples and similar submittals which the Contractor and his Subcontractors need for their use plus two additional sets for the Architect and one additional set for each of the Architect's consultants involved with the particular section of work. Where shop drawings are involved, 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 his consultants and returned to the Contractor for his use, distribution, correction or re-submittal as required. The Architect and his consultants will retain the marked up prints. After final review and correction of the submittal, the Contractor shall send two corrected sets to the Architect, and one to each of the Architect's consultants involved with the particular section of work.

### **§ 3.13 USE OF SITE**

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

**§3.13.1** 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 materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.



**§3.13.2** The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without written consent of the Owner.

**§3.13.3** Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision on the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of: (1) any area and buildings adjacent to the site or the Work or (2) the Building in the event of partial occupancy.

**§3.13.4** Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including without limitation, lavatories, toilets, entrance and parking areas other than those designated by Owner. Without limitation of any other provisions of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time.

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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

**§ 3.15.3** Prior to the Architect's inspection for Submittal Completion the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roof, 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.

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless Owner, the Board of Trustees of Owner, all elected officials, employees and agents of Owner and of any of the above mentioned parties (the "Indemnified Parties") from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty, or cause of action (including attorneys' fees), directly or indirectly arising out of, resulting from, or related to (in whole or in part), (1) the Work performed hereunder, (2) the Contract, or (3) the act or omission of Contractor, a Subcontractor, or an individual, partnership, joint venture, corporation or other entity (a) directly or indirectly employed by Contractor or a Subcontractor, or (b) for whose acts or omissions Contractor or a Subcontractor may be liable (excluding property damage to the Work itself, covered by Owner's all-risk builder's risk insurance, subject to Contractor's liability for any deductible amounts thereunder). The obligations of Contractor under this indemnification shall apply to all matters except those arising solely from the wanton and willful negligence or the malicious acts or omissions of Owner. Further, the obligations of Contractor under this indemnification shall not extend to the liability of Architect, its agents, or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, (2) the giving of or failure to give directions or instructions by Architect, its agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage, or (3) any matter prohibited by Section 130.002, Texas Civil Practice and Remedies Code. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding, or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, Owner shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and Owner, and Owner shall have reasonably concluded that there may be legal defenses available to it that are different from, or additional to, or inconsistent with, those available to Contractor, then Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification Section, then Owner, at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Contractor to Owner, together with interest on the same from the date any such expense was paid by Owner until reimbursed by Contractor, at the rate of interest provided to be paid on judgments by the law of the jurisdiction to which the interpretation of the Contract is subject. The obligations of Contractor under this Section shall survive the expiration of the Contract and specifically shall survive the limitations contained in Section 15.1 hereof.

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

### § 3.19 SUBSTITUTIONS OF PRODUCTS AND SYSTEMS, "OR EQUAL" BRANDS

§ 3.19.1 The materials, products and the systems covered by these specifications have been selected as a standard because of quality, particular suitability, or record of satisfactory performance. It is not intended to preclude the use of equivalent or better materials, products or systems provided that it meet the requirements of the particular project and have been approved in an addendum as a substitution prior to the submission of bids. If prior written approval in an addendum has not been obtained, it will be assumed that the Bid is based upon the materials, products, and systems described in the Bidding Documents and no substitutions will be permitted, except as provided hereinafter.

§3.19.2 If, after award of contract, the Contractor or one of his Subcontractors or Suppliers determines 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 the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate modification.

### §3.20 RECORD DRAWINGS

§3.20.1 At the completion of the project, the Contractor shall submit one complete set of blue lines showing all changes and routing of utilities made during construction, excluding Architect made CAD changes, to the Architect. Drafting

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shall be legible to the Architect's satisfaction. The Contractor shall pay for the cost of the required recording/drafting. The record set shall be kept up to date on a daily basis and the Architect shall review its status at the project meetings. The Architect shall furnish the Contractor with a blueline set at contract award which shall have all Addenda incorporated. The Owner will pay for the printing of the blueline set. The Architect will incorporate any record information into the construction (CAD) documents and provide the Owner with an electronic copy of the record information on the Construction documents that have all bid and construction changes incorporated. The cost for incorporating the record information into the CD will be paid for by the Owner. The Architect will transmit the electronic CD to the Owner with a copy of the transmittal to the Contractor's construction manager.

#### **ARTICLE 4 ARCHITECT**

##### **§ 4.1 GENERAL**

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

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the former Architect.

##### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

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

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

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect shall not have control over or charge of and shall not be responsible for safety precautions and programs in connection with the Work. Architect shall be responsible for promptly notifying Contractor of the failure of Contractor, Subcontractors or any other persons performing any of the Work, in failing to use proper construction means, methods, techniques, sequences, procedures, safety precautions and programs, but only to the extent Architect becomes aware of, or should, exercising due professional diligence, be aware of, same. Architect shall also promptly notify Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

##### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

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

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

§ 4.2.6 The Architect has authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

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

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

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

§ 4.2.13 DELETED.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.



## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, but no later than 10 days prior to the submittal date for the Contractor's first Application for Payment shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. Failure of the Contractor to submit the subject names in a timely manner may delay processing of the Contractor's Application for Payment.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection.

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

### § 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.3.1 All subcontracts shall be in written form and shall specifically provide that Owner is an intended third-party beneficiary of the subcontract.

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

§ 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.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

### § 6.2 MUTUAL RESPONSIBILITY

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

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



§ 6.2.3 DELETED.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may only 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 and is subject to the approval of the 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 and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect and is subject to the approval of the Owner.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Section 7.3 and 9.7, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 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 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited, to all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§7.2.3 Contractor shall keep and periodically submit to Owner copies of a log for all Change Orders.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

§ 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 in writing between the Owner and the Contractor;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon in writing between the Owner and the Contractor;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, in each case in writing between the Owner and the Contractor; or
- .4 As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit not to exceed a total maximum of **fifteen percent (15%)** for all Work, and further limited to as follows, not to exceed five percent (5%) for Work done by Contractor's employees and **ten percent (10%)** of such Work's actual cost to be apportioned between any and all Subcontractors and Sub-subcontractor. "*Actual cost*" does not include any item that could be deemed to be a general conditions cost or overhead, such as, but not limited to, the cost of Contractor and Subcontractor supervisory personnel assigned to the Work, and field office and related expenses. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

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reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority after having obtained Owner's approval to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

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

§ 8.1.1.1 The Work shall be fully completed within the time limit and/or date stated in the Contract between Owner and Contractor.

§ 8.1.1.2 **Liquidated Damages:** If the Contractor should fail to fully complete the Work within the stated time (subject however to extension of time duly granted in the manner and for the causes specified in the General Conditions), Contractor shall be charged by and shall pay to Owner, as liquidated damages, the sum specified in Article 3 of the AIA document A101 – 2017 by and between Owner and Contractor to which this document is attached as Exhibit A per calendar day that the Work remains incomplete beyond the time fixed for completion. Contractor hereby agrees that from the nature of the project it would be impracticable and extremely difficult to fix the actual damage that would or will be suffered in the event that Contractor should fail to fully complete the Work by the time limit or date stated and the amount of the liquidated damages are fair and reasonable. The parties agree that the liquidated damages are a reasonable forecast of just compensation for the harm done to Owner that would be caused by Contractor's failure to timely complete the Work. Contractor agrees that the amount of liquidated damages due Owner may be deducted by Owner from any monies that might otherwise be or become payable to Contractor.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

#### § 8.2 PROGRESS AND COMPLETION

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

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

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

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes

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beyond the Contractor's control; or by delay authorized by Owner pending mediation, or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor or that are otherwise the responsibility of Contractor and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

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

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contractor shall not be entitled to damages of any type for delays caused by Owner, his servant, agents, employees, or separate Contractors hired or retained by Owner. Contractor may receive an extension or extensions for additional time in which to complete the Contract but shall not receive any damages of any type for such delays. 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 intentional interference with Contractor's performance of the Work.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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

**§ 9.1.1 Commitment of Current Revenues Only.** As reflected in Section 4.5 of the modified AIA document A101 – 2017 Edition by and between Owner and Contractor to which this document is attached as Exhibit A, in the event that, during any term hereof, the governing body of any party does not appropriate sufficient funds to meet the obligations of such party under this Contract, then any party may terminate this Contract upon ninety (90) days written notice to the other party. Each of the parties hereto agrees, however, to use its best efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of each party hereto pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903.

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work, which in the aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as Architect may direct or as required by Owner. This schedule, when approved by Architect and Owner, shall be used to monitor the progress of the Work and as a basis for Certificates for Payment. All items with entered values will be transferred by Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directives values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by Architect and approved by Owner. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed, and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Any

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allowances included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall be accompanied by a certification by an office of Contractor to the effect that:

There are no known mechanics', materialman's or laborers' liens or claims, or any other liens or claims, legal or equitable, contractual, statutory, or constitutional, outstanding or known to exist at the date of this Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics', materialman's or laborers' lien or claim, or any other lien or claim, legal or equitable, contractual, statutory, or constitutional, on the Work; and waivers and releases from all Subcontractors, laborers, and material men for Work done and materials furnished have been obtained in such form as to constitute an effective waiver and release of all such liens and claims under the laws of the state within which the Project is located and shall be delivered to Architect together with Contractor's waiver and release of liens and claims at the time of submission of the Application for Payment.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing by the Owner and Surety. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

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

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and on all other information available to Architect including, without limitation, the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and

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inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified and that the aggregate amount theretofore paid to Contractor plus any applicable retention does not exceed the value of the completed portion of the Work. 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, or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion within 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.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner may refuse to make payment on any Certificate for Payment for any default of the Contract, including, but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor.

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

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

§ 9.6.7 DELETED.

### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not, for reasons other than a default of the Contract, including but not limited to, those defaults set forth in Sections 9.5.1.1 through 9.5.1.7 pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.1 If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner sole discretion, elect either to (i) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (ii) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which 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 (which Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of issuance of the certificate of final payment by Architect unless otherwise provided in the Certificate of Substantial Completion. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract are in place. In general, the only remaining Work shall be minor in nature, so that Owner and/or Owner's employees and if applicable, the public, could occupy the building on that date and the completing of the Work by Contractor would not materially interfere or hamper Owner's or Owner's employees and if applicable, the public, (or those claiming by, through, or under Owner) from normal County operations. As a further condition of Substantial Completion acceptance, Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. If Contractor requests a Substantial Completion review, and Architect, after performing the Substantial Completion review, finds that the Project was not ready for the Substantial Completion review, then Contractor shall pay the Architect's fees for any additional Substantial Completion reviews.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§9.8.6** In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met: (1) All inspections by governmental authorities have jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect. (2) All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

**§9.8.7** After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to correct all deficiencies attached to the Certificate of Substantial Completion. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In this report, the Contactor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

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

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

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

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 faulty or defective Work appearing after Substantial Completion.

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

### ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

#### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

#### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, 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.

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

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

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

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

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

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

**§ 10.3 HAZARDOUS MATERIALS**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons



or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 DELETED.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

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

§ 10.3.6 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. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 SCHEDULE OF INSURANCE COVERAGES

§ 11.1.5.1 Contractor shall carry and keep in full force for the duration of the project the following Coverage.

| Coverage                            | Minimum Amounts and Limits                                |
|-------------------------------------|---|
| Worker's Compensation               |   |
| Employer's Liability:               | Statutory Limits  |
| Bodily Injury by Accident           | \$500,000.00/each accident                                |
| Bodily Injury by Disease            | \$500,000.00/each employee                                |
| Bodily Injury by Disease            | \$500,000.00/Policy Limit                                 |
| <b>Commercial General Liability</b> |   |
| Bodily Injury/Property Damage       | \$1,000,000.00 per occurrence<br>\$2,000,000.00 aggregate |

(Premises Operations, Independent Contractors, Product/Completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse, Underground and Broad Form Property Damage).

|   |  |
|---|--|
| <b>Comprehensive Automobile Liability</b> | \$1,000,000.00 Combined Single<br>Limit per Occurrence |
|---|--|

Auto liability insurance shall be on a standard form written to cover all owned, hired, and non-owned automobiles. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insured, contain cross-liability and severability of interest endorsements, and state that this insurance is primary insurance as regards to any other insurance carried by the Indemnified Parties (see Section 3.18).

§11.1.5.2 All policies shall contain special endorsements to include:

- .1 The Owner as an additional insured (except for Worker's Compensation) and all other parties identified in Section 3.18 (Indemnified Parties);
- .2 Waiver of Subrogation in favor of Owner under the Worker's Compensation and Employer's Liability policies.
- .3 A statement that a notice shall be given to Owner by certified mail thirty (30) days prior to cancellation or upon any material changes in coverage.
4. Contain cross-liability and severability of interest endorsements;
5. state that this insurance is primary insurance in regard to any other insurance carried by an Indemnified Party (see Section 3.18);



6 the following coverage:

- a. Premises/Operations;
- b. Independent Contractors;
- c. Completed Operations for a period of two years following the acceptance of Contractor's Work;
- d. Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor, Broad Form Property Damage, and Personal Injury Liability with employee and contractual exclusions removed);
- e. Deletion of exclusions relative to Collapse, Explosion, and Underground Property Damage Hazards;
- f. Personal Injury Liability with the contractual exclusions removed;
- g. Cross Liability Endorsement.

#### §11.1.5.6 Umbrella Excess Liability Insurance

|                                   |   |
|-----------------------------------|---|
| Bodily Injury and Property Damage | \$2,000,000.00 per occurrence<br>\$2,000,000.00 aggregate |
|-----------------------------------|---|

This policy shall be written on an umbrella excess basis above, the coverage described in this Article 11. The policy shall be endorsed to include the Indemnified Parties (Section 3.18) as additional insureds. The policy shall contain cross-liability and severability of interest endorsements and shall state, as regard the Indemnified Parties that the insurance is primary insurance as to any other insurance carried by any Indemnified Party. The policy shall be endorsed to provide the defense coverage obligation.

**§11.1.6** Further, Contractor shall require all Subcontractors to carry similar insurance coverage and limits of liability as required under this Article 11, adjusted to the nature of Subcontractor's operations and submit same to Owner for approval before any Work commences.

**§11.1.7** In the event Contractor fails to obtain the required certificates of insurance from the Subcontractor and a claim is made or suffered, Contractor shall indemnify, defend, and hold harmless the indemnified parties from any and all claims for which the required insurance would have provided coverage.

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

##### §11.1.8.1 Definitions:

- .1 Certificate of coverage ("certificate") - A copy of a 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 person's or entity's employees providing services on a project, for the duration of the project.
- .2 Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- .3 Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person 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 which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

**§11.1.8.3** The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

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

**§11.1.8.5** The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

- .1 a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
- .2 no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

**§11.1.8.6** The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

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

**§11.1.8.8** 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.

**§11.1.8.9** 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, Section 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 year thereafter;
- .6 notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- .7 contractually require each person with whom it contracts, to perform as required by paragraphs .1 - .7, with the certificates of coverage to be provided to the person for whom they are providing services.

**§11.1.8.10** By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the 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.

**§11.1.8.11** The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

## **§ 11.2 OWNER'S LIABILITY INSURANCE**

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

**§ 11.2.1** 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 or 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.

**§11.2.2** 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 Article 11.

## **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** 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 others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. The policy must also name its subcontractors and the Owner as additional insured, as their respective interests may appear. 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. The policy must have the following endorsement: "This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework,

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testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.1.1 For any claim made against Contractor's Builder's Risk Insurance, the deductible shall not exceed \$2,500.00 for a Contract Sum of less than \$4 million. For a Contract Sum of \$4 million or more, the deductible shall not exceed \$5,000.00.

§11.3.1.1.2 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 Section 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.

§11.3.1.1.3 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.

§ 11.3.1.2 DELETED.

§ 11.3.1.3 DELETED.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use shall not affect the validity or coverage of property insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE DELETED.

§ 11.3.3 LOSS OF USE INSURANCE DELETED.

§ 11.3.4 DELETED.

§ 11.3.5 DELETED.

§ 11.3.6 DELETED.

### § 11.3.7 WAIVERS OF SUBROGATION

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 Article 11 or other property insurance applicable to the Work, except such rights as Contractor has to proceeds of such insurance held by the Contractor as fiduciary. The Contractor, as appropriate, shall require of any separate contractors, Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate

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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.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 DELETED.

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

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The 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 Subchapter A of Chapter 3503 of the Texas Insurance Code.

§11.4.1.1 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.

§11.4.1.2 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.

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

§ 11.4.3 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 on or after the date of execution of the Contract but prior to the date of the notice to proceed. 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.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs



and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## § 12.2 CORRECTION OF WORK

### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work (unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties), or within such longer period of time as may be prescribed by law or in equity, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This corrective period 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 performance of the Work. Corrective Work shall be warranted to be free from defects for a period equal to the longer of six (6) months after the completion of the corrective Work or one (1) year after the Date of Substantial Completion (subject to extension as previously described) or such longer period of time as may be prescribed by law or in equity, or expiration of the term of any applicable special warranty, if applicable, required by the Contract Documents. Any defect in such Work shall be corrected again by Contractor promptly upon notice of the defect from Owner. This obligation under this Section 12.2.2.1 shall survive acceptance of the Work under the Contract and termination of the Contract by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

§12.2.2.4 Just before the termination of the various guarantee periods, Contractor shall accompany Owner's agent and Architect on an inspection tour of the building and shall note any defects and shall start remedying these defects within ten (10) days of the inspection tour and shall prosecute the Work without interruption until accepted by Owner and Architect, even though such prosecution should extend beyond the limit of the guarantee period.

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused in whole or in part by the Contractor's correction or removal of Work that is defective or otherwise 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 or under law or in equity. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.



### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

### § 13.3 WRITTEN NOTICE

§13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice or if delivered by facsimile to the offices of the person or corporation for which it was intended. Facsimiles received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity or by any other agreement, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.

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

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. Architect or Owner may at any time request and receive from Contractor satisfactory evidence that materials, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.

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

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§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, or reveal faulty or otherwise defective Work, or if the necessity of any such testing, inspection, or approval procedures arises out of the fault, neglect, or omission of Contractor, Contractor shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by Contractor's failures, including, without limitation, those costs of repeated and additional procedures and compensation for Architect's services and expenses of Owner's personnel and consultant fees and expenses. Such costs shall be paid by Contractor within ten (10) days of receipt of invoice from Owner with supporting data attached.

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

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

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

#### § 13.6 INTEREST

An overdue payment bears interest at the legal rate established by the Texas Government Code, currently in Section 2251.025, or in the event no rate is so established, at the rate of one percent (1%) each month. Any such payment shall be deemed overdue on the thirty-first (31<sup>st</sup>) day after Owner receives an invoice from Contractor.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract within the time period specified by applicable law.

§ 13.8.1 The Contractor shall maintain policies of employment as follows: "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."

§13.8.1.1 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.

#### §13.9 CERTIFICATION OF ASBESTOS-FREE PROJECT

§13.9.1 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.

§13.9.2 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.

§13.9.3 Final payment shall not be made until this letter of certification has been received.

## 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 sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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

*(Paragraphs deleted)*  
stopped.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed in accordance with the Contract Documents.

§ 14.1.4 Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Sections 14.1.1 and 14.1.2.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials and equipment;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law; or
- .6 otherwise does not fully comply with the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 To the extent the costs of completing Work, including compensation for additional professional services and expenses, exceed those costs that would have been payable to Contractor to complete the Work except for

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Contractor's default, Contractor will pay the difference to Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by Owner will be determined by Owner and confirmed by Architect.

**§14.2.5** In addition to Owner's right to remove Contractor from any part of Work pursuant to the Contract Documents, Owner may, at any time, at will and without cause, terminate any part of Work or any subcontract or all remaining Work for any reason whatsoever by giving seven (7) days' prior written notice to Contractor specifying the part of Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of Work not terminated. If any part of Work or subcontract is so terminated, Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) and for costs directly related to Work thereafter performed by Contractor in terminating such Work or subcontract including reasonable demobilization and cancellation charges provided said Work is authorized in advance by Architect and Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the Date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

**§14.2.6** Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Section 14.2.5.

**§14.2.7** Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.2.5 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 14.2.5.

#### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

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

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

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, without any overhead or profit on the Work not executed.



## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right adjustment, or interpretation of the Contract Terms, payment of money, extension of 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. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be by written notice.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Said written notice of claims shall state specifically the reason for the claim, the date or dates of the cause or causes of the claim, and if any extension of time is requested, the number of days of extension requested.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such claim shall be value unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if Architect determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

*(Paragraph deleted)*

Contractor shall not be entitled to claims for additional time and/or increase in Contract Price due to a problem or non-performance of a subcontractor.

**§ 15.1.7** In the event the Contractor fails to achieve substantial completion by the date indicated in the Contract, and extended by approved Change Order, the Owner shall be entitled to liquidated damages in the amount as stated in Section 3.1.1 of the modified AIA document A 101 – 2007 Edition by and between Owner and Contractor to which this document is attached as Exhibit A per day until the Work is substantially completed. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by Owner in the event that the Work is not completed within the agreed time, or within the legally extended time, if any. Said sum shall be considered as liquidated damages only, the exact ascertainment of which is difficult and in no sense be considered a penalty.

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This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## § 15.2 INITIAL DECISION

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

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

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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

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

§ 15.2.6 DELETED.

§ 15.2.6.1 DELETED.

§ 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 DELETED.

## § 15.3 MEDIATION

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.



§ 15.3.3 The parties shall share the mediator’s fee. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

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.

**OWNER:**

**McALLEN INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_

**CONTRACTOR:**

**HELLAS CONSTRUCITON, INC.**

By: \_\_\_\_\_

Printed Name: Saulo Hernandez

Title: EIT Director of Estimating

APPROVED AS TO FORM  
ATLAS, HALL & RODRIGUEZ, LLP

By: \_\_\_\_\_  
Stephen L. Crain

*(Paragraphs deleted)*

EXHIBIT B

to

Agreement dated February 28, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1037 Synthetic Turf for Baseball and Softball Fields at McAllen High School, McAllen Memorial High School, and James Nikki Rowe High School (Owner Contract No. 2022-179))

Contractor's Proposal





February 18, 2022

Ruben Trevino  
Executive Director of Facilities  
McAllen ISD  
956.605.9296  
[Ruben.trevino@mcallenisd.net](mailto:Ruben.trevino@mcallenisd.net)


RE: Synthetic Turf for Baseball and Softball Fields at McAllen HS, McAllen Memorial HS and James “Nikki” Rowe High School

**Best and Final**

For the best and final for the above referenced project **Hellas** can offer the following:

|                      |                        |
|----------------------|------------------------|
| McAllen HS Baseball  | \$ 1,180,226.67        |
| McAllen HS Softball  | \$ 477,240.00          |
| McAllen HS Allowance | \$ 100,000.00          |
| Mcallen HS Total     | \$ 1,757,466.67        |
|                      |                        |
| Memorial HS Baseball | \$ 1,121,118.67        |
| Memorial HS Softball | \$ 451,908.00          |
| Memorial Allowance   | \$ 100,000.00          |
| Memorial Total       | \$ 1,673,026.67        |
|                      |                        |
| James Rowe Baseball  | \$ 1,208,898.67        |
| James Rowe Softball  | \$ 489,528.00          |
| James Rowe Allowance | \$ 100,000.00          |
| James Rowe Total     | \$ 1,798,426.67        |
|                      |                        |
| <b>TOTAL</b>         | <b>\$ 5,228,920.00</b> |

**Hellas Construction, Inc.** looks forward to the award of this project, and is eager to work with you.

  
Saulo Hernandez  
Director of Estimating  
Hellas Construction, Inc.





**2022-1037 Addendum 1  
Hellas Construction, Inc.  
Supplier Response**

**Event Information**

Number: 2022-1037 Addendum 1  
Title: RFCQ Synthetic Turf for Baseball and Softball Fields at McAllen High School, McAllen Memorial High School, and James Nikki Rowe High School  
Type: Request for Cooperative Quotes  
Issue Date: 2/1/2022  
Deadline: 2/15/2022 03:00 PM (CT)  
Notes: McAllen Independent School District (the "District") invites your Cooperative Quote on the above referenced project.

All respondents shall be approved contractors through District approved cooperative(s). Some vendors may support multiple cooperative contracts, therefore we request to utilize the contract that proposes the best value for the District.

Interested respondents may obtain specifications through IonWave. The District prefers and encourages respondents to submit their proposals electronically, through IonWave.

Any questions regarding this solicitation must be submitted through the "Questions" option located on the IonWave website, no later than the date and time specified on the solicitation. Questions/clarifications regarding this solicitation will not be answered by phone nor email.

\*\*\*\*To schedule a campus visit, please contact **Melissa Ortiz, Project**

**Manager for Facilities, Maintenance and Operations at  
melissa.ortiz@mcallenisd.net.**

**\*\*\*\*Refer to attached specifications, technical specifications,  
plans/drawings and "Draft Contract".\*\***

## **Contact Information**

Contact: Graciela Garza Senior Buyer  
Address: Purchasing Services  
Administration Office  
2000 N 23rd St  
McAllen, TX 78501-6126  
Phone: (956) 6574487  
Fax: (956) 6574481  
Email: ggarza@mcallenisd.net

## Hellas Construction, Inc. Information

Address: 12710 Research Boulevard  
Suite 240  
Austin, TX 78759  
Phone: (512) 250-2910

By submitting your response, you certify that you are authorized to represent and bind your company.

Caleb Marlar

Signature

Submitted at 2/15/2022 1:44:43 PM

cmarlar@hellasconstruction.com

Email

## Requested Attachments

### Completed CIQ Form

CIQ.pdf

Upload your completed Conflict of Interest Questionnaire. If no conflict, indicate "N/A" (not applicable) on the form.

### Proof of Insurance (Acord Certificate of Insurance)

UPDATED COI.pdf

Upload your Certificate of Insurance in Acord form.

### Completed Form 1295

Form 1295 Certificate.pdf

Upload completed Form 1295. Form must be completed online:  
[http://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

If not applicable to your company, please attach a statement indicating the reason.

### Completed W-9 Form

Hellas W9.pdf

Upload your completed W-9 form.

### Assumed Name Certificate

No response

Upload your Assumed Name Certificate

## Bid Attributes

### 1 General Terms and Conditions

Please download and read the General Terms and Conditions for this solicitation. Acknowledge you have read, understand and accept the general terms and conditions.

\*\*This is your electronic signature.

I have read, understand and accept. (I have read, understand and accept.)

### 2 Specifications and Scope of Work

Please download and read the Specifications and Scope of Work for this solicitation. Acknowledge you have read, understand and accept the specifications and scope of work.

\*\*This is your electronic signature.

I hereby acknowledge. (I hereby acknowledge.)



**3 Felony Conviction Notification**

Texas Education Agency Code, Section 44.034, Notification of Criminal History, Subsection (a), states, "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states, "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." This notice is not required of a publicly held corporation.

Select where applicable:

- A. My company is a publicly held corporation; therefore, this reporting requirement is not applicable.
- B. My company is not owned nor operated by anyone who has been convicted of a felony.
- C. My company is owned and operated by an individual who has/have been convicted of a felony.

\*\*This is your electronic signature.

B. My company is not owned nor operated by a felon

**4 Felony Conviction Details**

If your firm is owned or operated by anyone who has been convicted of a felony, please list their names and the details of the conviction(s). If not applicable, please enter N/A (not applicable).

N/A

**5 Criminal History Record Information Review of Certain Contract Employees**

Bidder agrees to comply with Section 22.0834. Criminal History Record Information Review of Certain Contract Employees, Texas Education Code if awarded a contract through this solicitation. The undersigned Bidder, if awarded a contract, shall obtain criminal history record information through the criminal history clearinghouse as provided by Section 411.0845, Government Code relating to an employee or applicant who has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. The Bidder agrees to certify of the receipt of criminal history record information before or immediately after employing or securing the services of the employee or applicant that has or will have continuing duties related to the contracted services if the employee or applicant has or will have direct contact with students. The Bidder further agrees that if awarded a contract, shall assume all expenses associated with the criminal background check and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or the location where students are present.

**A. None of my employees** and any of my subcontractors has or will have continuing duties related to the contracted services; and has or will have direct contact with students. I further certify that my company has taken precautions or imposed conditions to ensure that my employees and any subcontractor will not have continuing duties related to the contracted services; and will not have direct contact with students throughout the term of the Contract.

OR

**B. Some or all of my employees** and/or my subcontractors will have continuing duties related to the contracted services; and will have direct contact with students. I further certify that:

1. I have obtained all required criminal history record information regarding all of my employees and/or my subcontractors. None of my employees and/or my subcontractors has any conviction or other criminal history information if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state. **If available, attach a copy of your FAST Pass Receipt.**
2. If I receive information that any of my employees and/or subcontractors subsequently has a reported criminal history, I will immediately remove the covered employee from contract duties and notify the District in writing immediately.
3. I will provide the District with the names and any other requested information regarding any of my employees and/or subcontractors so the District may obtain criminal history record information if awarded a contract.
4. If the District objects to the assignment of any of my employees and/or subcontractors, I agree to discontinue using the individual to provide services to the District.

\*\*This is your electronic signature.

A. None - I hereby agree and certify.

**6 Confidential/Copyrighted Information**

Contractor agrees, if a bid is, or parts of bid is confidential, the Contractor has specified by stamping in bold letters the term "CONFIDENTIAL" on all or the confidential part of the bid. The bid may be considered public information even though all or parts are marked confidential. Furthermore, Contractor agrees a copyrighted bid is unacceptable and will be disqualified as unresponsive.

\*\*This is your electronic signature.

I have read and agree. (I have read and agree.)

**7 Declaration of Business Location - Texas Education Code 44.031(b)(8)**

Bidder certifies the Bidder's or the Bidder's ultimate parent company or majority owner:

- A. Has its principal place of business in the State of Texas; OR
- B. Employs at least 500 persons in the State of Texas
- C. Principal place of business is not in the State of Texas.

\*\*This is your electronic signature.

B. Principal place employs 500+ in Texas

**8 Declaration of Business Location - Texas Education Code 44.031(b)(8)**

Specify principal place of business (City/State).

If not applicable, please enter N/A (not applicable).

\*\*\*This is your electronic signature.

12000 West Parmer Lane, Austin, TX 78613

**9 Prohibition on Contracts with Companies Boycotting Certain Energy Companies (SB 13)**

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**10 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries (SB 19)**

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**1**  
**1** **Entities That Boycott Israel**

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, 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 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.

\*\*This is your electronic signature.

I agree and hereby certify. (I agree and hereby certify.)

**1**  
**2** **TEXAS GOVERNMENT CODE Sec. 2252.152. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.**

A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**1**  
**3** **TEXAS GOVERNMENT CODE Sec. 2252.153. LISTED COMPANIES**

Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3 This Act takes effect September 1, 2017.

Vendor 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.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**1**  
**4** **Non-Collusion Statement**

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or business or legal entity.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**15** **Contracts in Excess of \$250,000**  
Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**16** **Contracts in Excess of \$10,000**  
All contracts in excess of \$10,000 must address termination for cause and for convenience including the manner by which it will be affected and the basis for settlement.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**17** **Equal Employment Opportunity**  
Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity”(30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**18** **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)**  
When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non- Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

\*\*This is you electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**19 Contract Work Hours and Safety Standards Acts (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**20 Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**21 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**

Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**22 (H) Debarment and Suspension (Executive Orders 12549 and 12689)**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by the District, the vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Vendor shall immediately provide written notice to the District if at any time the vendor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The District may rely upon a certification of a vendor that the vendor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the District knows the certification is erroneous.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)



**2 3 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**

Contractors that apply or submit an offer for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**2 4 2 C.F.R. § 200.323 PROCUREMENT OF RECOVERED MATERIALS**

An entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**2 5 2 C.F.R. § 200.216 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The District, as a non-federal entity, is prohibited from obligating or expending Federal financial assistance, to include loan or grant funds, to: (1) procure or obtain, (2) extend or renew a contract to procure or obtain, or (3) enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and physical security surveillance of critical infrastructure and other national security purposes, and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes detailed in 2 CFR § 200.216. The vendor shall certify that they will not purchase equipment, services, or systems that use covered telecommunications, as defined herein, as a substantial or essential component of any system, or as critical technology as part of any system.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**2  
6** **2 C.F.R. § 200.322 CERTIFICATION OF DOMESTIC PREFERENCES FOR PROCUREMENTS AND COMPLIANCE WITH BUY AMERICA PROVISIONS**

As appropriate and to the extent consistent with law, the District should, to the greatest extent practicable under a Federal award, provide has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) when spending federal funds. Vendor agrees that the requirements of this section will be included in all subawards including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**2  
7** **2 C.F.R § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms**

CFR 200.321 requires that (a) non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**2  
8** **Texas Historically Underutilized Businesses (HUB) – Texas Education Code 44.031(b)(6) or Small and Minority Firms, Women's Business Enterprises, & Labor Surplus Area Firms**

Contractor certifies the Bidder's company is HUB certified with the State of Texas.

- I am an Active certified HUB vendor (attach HUB certificate):  
 Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms  
 I am neither.

\*\*This is your electronic signature.

**29 2 C.F.R § 200.334 RECORDS RETENTION REQUIREMENTS**

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Contractor certifies that Contractor is in compliance with all applicable provisions of 2 CFR 200.334.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**30 Buy American Provision**

Contractor certifies that Contractor is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**31 Federally Funded Purchases**

Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases.

\*\*This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

**32 Addendum**

Bidder/Respondent acknowledges that he/she will download and review all addenda issued on this project, if applicable.

\*\*This is your electronic signature.

I have read and hereby acknowledge. (I have read and hereby acknowledge.)

**Bid Lines**

**1 All respondents shall have current contracts through District-approved Purchasing Cooperatives.**

**Item Attributes**

**1. List the name and Contract Number of the Purchasing Cooperative**

1GPA 17-18DP-03 Athletic Surfaces, Appurtenances, and Minor Structures

**2 Requirements**

**Item Attributes**

**1. Deviations and Exceptions**

If your company intends to deviate from the Specifications listed in the solicitation attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The District reserves the right to accept or reject any proposals based upon any deviations indicated below. **If none, enter N/A (Not Applicable).**

N/A 294

## 2. Conflict of Interest Questionnaire (CIQ)

All vendors doing business with the District must provide a Conflict of Interest Questionnaire Form as required by Texas Local Gov't Code 176.006. Failure to submit may result in disqualification.

Does this vendor have conflict of interest with McAllen Independent School District? (Attach completed form in "Response Attachments" tab.)

No

## 3. Form 1295 - Certificate of Interested Parties

The Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 before the District may enter into a contract with that business entity. Form 1295 must be submitted with your proposal and is required as condition of award. Form must be completed online.

Access form at:

- [http://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
- Complete the form
- Enter solicitation number and name
- Print and sign form
- Attach form on "Response Attachments" tab

If exempt, attach documentation.

I have read and understand. (I have read and understand.)

## 4. Delinquent Taxpayers

In accordance with law, the District shall not enter into a contract or other transaction with a person indebted to the District, nor shall the District award a contract to or enter into a transaction with any proposer indebted to the District.

\*\*This is your electronic signature.

I am NOT a delinquent taxpayer to McAllen ISD

## 5. Provide the business name as it is registered with the Texas Comptroller, or similar. \*Note: the name must match IRS registration and W-9 form.

Hellas Construction, Inc.

## 6. Does your company have a business name on Line 2 of the W-9? If yes, attach an Assumed Name Certificate/Fictitious Name issued by the State/County (on the "Response Attachments" tab).

Yes (upload Assumed Name Certificate) (Yes (upload Assumed Name Certificate))

No (No)

3 The District has a critical need for substantial completion by November 1, 2022. If the project begins on May 1, 2022 construction is to be completed by: November 1, 2022.

### Item Attributes

1. Specify the calendar days that you can substantially complete the project.

184

## 4 Package Header

Total Cost: McAllen High School Synthetic Turf for Baseball and Softball Fields

Total: \$1,770,800.00

Item Notes:

295

## Package Items

### 4.1 Synthetic Turf for Baseball Field Matrix 46 HELIX or XM-6 (Preferred brands)

Price:  Total:

Manufacturer:

Manufacturer #:

### 4.2 Contingency Amount

Price:  Total:

### 4.3 Synthetic Turf for Softball Field Matrix 46 HELIX or XM-6 (preferred brands)

Price:  Total:

Manufacturer:

Manufacturer #:

### 4.4 Contingency Amount

Price:  Total:

## 5 Package Header

### Total Cost: McAllen Memorial High School Synthetic Turf for Baseball and Softball Fields

Total:

Item Notes: **For Alternates, Click "Add Alternates" Note: Alternates require District approval. Post Alternates on questions tab.**

## Package Items

### 5.1 Synthetic Turf for Baseball Field Matrix 46 HELIX or XM-6 (preferred brands)

Price:  Total:

Manufacturer:

Manufacturer #:

### 5.2 Contingency Amount

Price:  Total:

### 5.3 Synthetic Turf for Softball Field Matrix 46 HELIX or XM-6 (preferred brands)

Price:  Total:

Manufacturer:

Manufacturer #:

### 5.4 Contingency Amount

Price:  Total:

## 6 Package Header

### Total Cost: James Nikki Rowe High School Synthetic Turf for Baseball and Softball Fields

Total:

Item Notes: **For Alternates, Click "Add Alternates" Note: Alternates require District approval. Post Alternates on questions tab.**

**Package Items**

**6.1 Synthetic Turf for Baseball Field Matrix 46 HELIX or XM-6 (preferred brands)**

Price:  Total:

Manufacturer:

Manufacturer #:

**6.2 Contingency Amount**

Price:  Total:

**6.3 Synthetic Turf for Softball Field Matrix 46 HELIX or XM-6 (preferred brands)**

Price:  Total:

Manufacturer:

Manufacturer #:

**6.4 Contingency Amount**

Price:  Total:

**Response Total: \$5,268,920.00**



EXHIBIT C

to

Agreement dated February 28, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1037 Synthetic Turf for Baseball and Softball Fields at McAllen High School, McAllen Memorial High School, and James Nikki Rowe High School (Owner Contract No. 2022-179))

Payment Bond

and

Performance Bond



Interchange Corporate Center  
 450 Plymouth Road, Suite 400  
 Plymouth Meeting, PA. 19462-1644  
 Ph. (610) 832-8240

**STATUTORY PERFORMANCE BOND PURSUANT TO CHAPTER 2253  
 OF THE TEXAS GOVERNMENT CODE  
 (Public Work - State of Texas)**

Bond Number: 022232880

KNOW ALL MEN BY THESE PRESENTS: that Hellas Construction, Inc.

\_\_\_\_\_ as Principal (the "Principal"),  
 and LIBERTY MUTUAL INSURANCE COMPANY, a Massachusetts stock insurance company, as surety (the  
 "Surety"), are held and firmly bound unto McAllen Independent School District

\_\_\_\_\_, as obligee (the "Obligee"), in  
 the amount of Five Million Two Hundred Twenty-eight Thousand Nine Hundred Twenty And No/100  
 \_\_\_\_\_ Dollars (\$5,228,920.00),  
 for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors,  
 and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the 28th day of  
February, 2022, for

**Contract 2022-179 Hellas Construction, Inc. through RFCQ No. 2022-1037**

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length  
 herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully  
 perform the work in accordance with the plans, specifications and contract documents, then this obligation shall be  
 void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the Provisions of Chapter 2253 of the Texas  
 Government Code and all liabilities on this bond shall be determined in accordance with the provisions of said  
 Chapter to the same extent as if it were copied at length herein. Pursuant to Chapter 2253, any notice of claim  
 should be sent to the Surety at the address referenced above.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 28 day of  
February, 2022.

WITNESS / ATTEST:

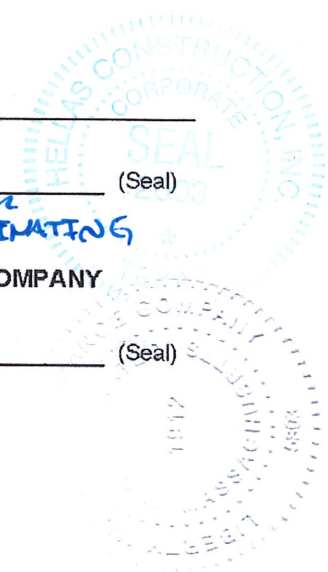
Jack Adams

**Hellas Construction, Inc.**  
 (Principal)

By: \_\_\_\_\_ (Seal)  
 Name: Rayo Hernandez  
 Title: DIRECTOR OF ESTIMATING

**LIBERTY MUTUAL INSURANCE COMPANY**  
 (Surety)

By: Ginger Hoke (Seal)  
**Ginger Hoke** Attorney-in-Fact





Interchange Corporate Center  
 450 Plymouth Road, Suite 400  
 Plymouth Meeting, PA. 19462-1644  
 Ph. (610) 832-8240

**STATUTORY PAYMENT BOND PURSUANT TO CHAPTER 2253  
 OF THE TEXAS GOVERNMENT CODE  
 (Public Work - State of Texas)**

Bond Number: 022232880

KNOW ALL MEN BY THESE PRESENTS: that Hellas Construction, Inc.

\_\_\_\_\_ as Principal (the "Principal"),  
 and LIBERTY MUTUAL INSURANCE COMPANY, a Massachusetts stock insurance company, as surety (the  
 "Surety"), are held and firmly bound unto McAllen Independent School District

\_\_\_\_\_ as obligee (the "Obligee"),  
 in the amount of Five Million Two Hundred Twenty-eight Thousand Nine Hundred Twenty And  
No/100 Dollars (\$5,228,920.00),  
 for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors,  
 successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee dated the 28th day of  
February, 2022, to

Contract 2022-179 Hellas Construction, Inc. through RFCQ No. 2022-1037

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length  
 herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all  
 claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said  
 contract, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the Provisions of Chapter 2253 of the Texas  
 Government Code and all liabilities on this bond shall be determined in accordance with the provisions of said  
 Chapter to the same extent as if it were copied at length herein. Pursuant to Chapter 2253, any notice of claim  
 should be sent to the Surety at the address referenced above.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 28  
 day of February, 2022.

WITNESS / ATTEST:

Jack Adams

**Hellas Construction, Inc.**

(Principal)

By: \_\_\_\_\_ (Seal)

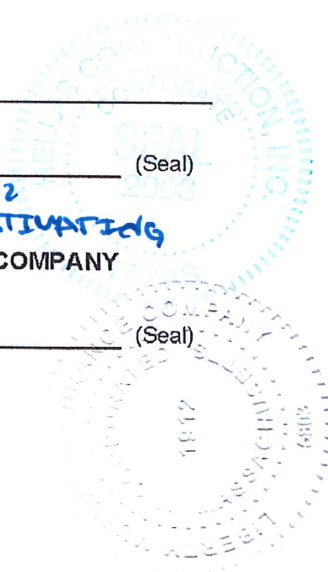
Name: Swito Alexander  
 Title: DIRECTOR OF ESTIMATING

**LIBERTY MUTUAL INSURANCE COMPANY**

(Surety)

By: \_\_\_\_\_ (Seal)

Ginger Hoke Attorney-in-Fact







This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8206213-969499

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, \_\_\_\_\_

all of the city of Dallas state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 31st day of August, 2021.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 31st day of August, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 28 day of February, 2022



By: Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email [redacted]



Liberty Mutual Surety  
Attention: LMS Claims  
P.O. Box 34526  
Seattle, WA 98124  
Phone: 206-473-6210  
Fax: 866-548-6837  
Email: [HOSCL@libertymutual.com](mailto:HOSCL@libertymutual.com)  
[www.LibertyMutualSuretyClaims.com](http://www.LibertyMutualSuretyClaims.com)

## TEXAS IMPORTANT NOTICE

To obtain information or make a complaint:

You may call toll-free for information or to make a complaint at:  
206-473-6210

You may also write to:  
Liberty Mutual Surety Claims  
P.O. Box 34526  
Seattle, WA 98124

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at 1-800-252-3439.

You may write the Texas Department of Insurance Consumer Protection (111-1A)  
P. O. Box 149091  
Austin, TX 78714-9091  
FAX: (512) 490-1007  
Web: <http://www.tdi.texas.gov>  
E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

### PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should first contact the agent or call 1-800-843-6446. If the dispute is not resolved, you may contact the Texas Department of Insurance.

### ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

## TEXAS AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis para informacion o para someter una queja al:  
206-473-6210

Usted tambien puede escribir a:  
Liberty Mutual Surety Claims  
P.O. Box 34526  
Seattle, WA 98124

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al 1-800-252-3439.

Puede escribir al Departamento de Seguros de Texas Consumer Protection (111-1A)  
P. O. Box 149091  
Austin, TX 78714-9091  
FAX # (512) 490-1007  
Web: <http://www.tdi.texas.gov>  
E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

### DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI)

### UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

EXHIBIT D

to

Agreement dated February 28, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1037 Synthetic Turf for Baseball and Softball Fields at McAllen High School, McAllen Memorial High School, and James Nikki Rowe High School (Owner Contract No. 2022-179))

Contractor's Insurance Certificates

Init.

/





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
02/24/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|  |                |  |               |
|--|----------------|--|---------------|
| PRODUCER<br>Holmes Murphy & Associates<br>12712 Park Central Dr., Suite 100<br>Dallas, TX 75251<br>Greg Stitts | 1-214-363-4433 | CONTACT NAME: Ryan Goodwin<br>PHONE (A/C No. Ext): 2147647536<br>E-MAIL ADDRESS: rgoodwin@holmesmurphy.com | FAX (A/C No): |
| INSURED<br>Hellas Construction, Inc.<br>12000 W Parmer Lane<br>Cedar Park, TX 78613                            |                | INSURER(S) AFFORDING COVERAGE  |               |
|  |                | INSURER A: AMERICAN ZURICH INS CO  | NAIC # 40142  |
|  |                | INSURER B: AMERICAN GUAR & LIAB INS  | 26247         |
|  |                | INSURER C: UNDERWRITERS AT LLOYDS  | 32727         |
|  |                | INSURER D:   |               |
|  |                | INSURER E:   |               |
|  |                | INSURER F:   |               |

**COVERAGES**

CERTIFICATE NUMBER: 64580604

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE   | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS  |
|----------|---|-----------|----------|---------------|-------------------------|-------------------------|---|
| A        | GENERAL LIABILITY<br><input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC |           |          | GLO869091401  | 03/05/21                | 03/05/22                | EACH OCCURRENCE \$ 2,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000<br>MED EXP (Any one person) \$ 10,000<br>PERSONAL & ADV INJURY \$ 2,000,000<br>GENERAL AGGREGATE \$ 4,000,000<br>PRODUCTS - COMP/OP AGG \$ 4,000,000 |
| A        | AUTOMOBILE LIABILITY<br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> NON-OWNED AUTOS  |           |          | BAP871436501  | 03/05/21                | 03/05/22                | COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$   |
| B        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br>DED RETENTION \$  |           |          | AUC144839800  | 03/05/21                | 03/05/22                | EACH OCCURRENCE \$ 4,000,000<br>AGGREGATE \$ 4,000,000  |
| A        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below  |           |          | WC871436401   | 03/05/21                | 03/05/22                | <input checked="" type="checkbox"/> WC STATUTORY LIMITS<br><input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                      |
| C        | Pollution/Professional  |           |          | CPP1001121    | 03/05/21                | 03/05/22                | Claim/Agg 2,000,000   |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Project: RFCQ No. 2022-1037- Synthetic Turf for Baseball and Softball Fields at McAllen High School, McAllen Memorial High School, and James Nikki Rowe High School  
McAllen ISD is an Additional Insured on General Liability, including Completed Operations, as required by written contract with the insured, per policy terms and conditions.  
The General Liability includes a Waiver of Subrogation in favor of McAllen ISD as required by written contract with the insured, per policy terms and conditions.

**CERTIFICATE HOLDER**

McAllen ISD  
2000 N. 23rd Street  
McAllen, TX 78501  
USA

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

304

© 1988-2014 ACORD CORPORATION. All rights reserved.

# SUPPLEMENT TO CERTIFICATE OF INSURANCE

DATE  
02/24/2022

NAME OF INSURED: Hellas Construction, Inc.

Certificate Holder is additional insured on General Liability and Auto Liability if required by written contract. Waiver of subrogation is provided to the Certificate Holder on the General Liability, Auto Liability and Employers Liability if required by written contract. 30 day notice of cancellation is provided to the Certificate Holder on the General Liability, Auto Liability, and Employers Liability policies if required by written contract. General Liability and Auto Liability coverage is primary and non-contributory of other insurance if required by written contract. Umbrella policy is follow form of the underlying General Liability, Auto Liability, Employers Liability and Contractual Liability.



ZURICH

# Additional Insured – Automatic – Owners, Lessees Or Contractors

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Policy No. GLO 8690914-01

Effective Date: 03/05/2021

This endorsement modifies insurance provided under the:

### Commercial General Liability Coverage Part

A. Section II – **Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured under a written contract or written agreement executed by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" and subject to the following:

1. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a. The Insurance Services Office (ISO) ISO CG 20 10 (10/01 edition); or
- b. The ISO CG 20 37 (10/01 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" arises out of:

- (1) Your ongoing operations, with respect to Paragraph 1.a. above; or
  - (2) "Your work", with respect to Paragraph 1.b. above,
- which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 1., insurance afforded to such additional insured:

- (a) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (b) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

2. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

- a. The Insurance Services Office (ISO) ISO CG 20 10 (07/04 edition); or
- b. The ISO CG 20 37 (07/04 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

in the performance of:

- (a) Your ongoing operations, with respect to Paragraph 2.a. above; or
- (b) "Your work" and included in the "products-completed operations hazard", with respect to Paragraph 2.b. above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 2., insurance afforded to such additional insured:

- (i) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (ii) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

3. If neither Paragraph 1. nor Paragraph 2. above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a. Under the ISO CG 20 10 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b. With respect to ongoing operations (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations, which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 3., insurance afforded to such additional insured:

- (a) Only applies to the extent permitted by law;
- (b) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and
- (c) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement.

4. If neither Paragraph 1. nor Paragraph 2. above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a. Under the ISO CG 20 37 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b. With respect to the "products-completed operations hazard" (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury" or "property damage" is caused, in whole or in part by "your work" and included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 4., insurance afforded to such additional insured:

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured;
- (3) Only applies if the "bodily injury" or "property damage" occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (4) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

- B. Solely with respect to the insurance afforded to any additional insured referenced in Section A. of this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- C. Solely with respect to the coverage provided by this endorsement, the following is added to Paragraph 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section IV – **Commercial General Liability Conditions**:

The additional insured must see to it that:

- (1) We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
- (2) We receive written notice of a claim or "suit" as soon as practicable; and
- (3) A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

- D. Solely with respect to the coverage provided by this endorsement:

1. The following is added to the **Other Insurance** Condition of Section IV – **Commercial General Liability Conditions**:

**Primary and Noncontributory insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the **Other Insurance** Condition under Section IV – **Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

- E. This endorsement does not apply to an additional insured which has been added to this Coverage Part by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

- F. Solely with respect to the insurance afforded to an additional insured under Paragraph A.3. or Paragraph A.4. of this endorsement, the following is added to Section III – **Limits Of Insurance**:

**Additional Insured – Automatic – Owners, Lessees Or Contractors Limit**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Section A. of this endorsement; or
2. Available under the applicable Limits of Insurance shown in the Declarations,  
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms, conditions, provisions and exclusions of this policy remain the same.



## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Person Or Organization:**

Any Person or Organization that requires You to waive your Rights of Recovery, in a written contract or agreement with the Named Insured that is executed prior to the accident or loss.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



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## Blanket Notification to Others of Cancellation or Non-Renewal

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Policy No. GLO 8690914-01

Effective Date: 03/05/2021

This endorsement applies to insurance provided under the:

### **Commercial General Liability Coverage Part**

- A.** If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contact or written agreement to provide such notification. Such list:
1. Must be provided to us prior to cancellation or non-renewal;
  2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
  3. Must be in an electronic format that is acceptable to us.
- B.** Our notification as described in Paragraph **A.** of this endorsement will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
1. Within 10 days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
  2. At least 30 days prior to the effective date of:
    - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
    - b. Non-renewal, but not including conditional notice of renewal,unless a greater number of days is shown in the Schedule of this endorsement for the mailing or delivering of such notification with respect to Paragraph **B.1.** or Paragraph **B.2.** above.
- C.** Our mailing or delivery of notification described in Paragraphs **A.** and **B.** of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
1. Extend the Coverage Part cancellation or non-renewal date;
  2. Negate the cancellation or non-renewal; or
  3. Provide any additional insurance that would not have been provided in the absence of this endorsement.

D. We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs A. and B. of this endorsement.

| <b>SCHEDULE</b>  |    |
|--|----|
| The total number of days for mailing or delivering with respect to Paragraph B.1. of this endorsement is amended to indicate the following number of days: | *  |
| The total number of days for mailing or delivering with respect to Paragraph B.2. of this endorsement is amended to indicate the following number of days: | ** |
| * If a number is not shown here, 10 days continues to apply.<br>** If a number is not shown here, 30 days continues to apply.                              |    |

All other terms and conditions of this policy remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

- AUTO DEALERS COVERAGE FORM
- BUSINESS AUTO COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

|   |
|---|
| <p><b>Named Insured:</b> Hellas Construction, Inc.</p> <p><b>Endorsement Effective Date:</b> 03/05/2021</p> |
|---|

### **SCHEDULE**

|  |
|--|
| <p><b>Name Of Person(s) Or Organization(s):</b></p> <p>Any person or organization to whom or which you are required to provide additional insured status or additional insured status on a primary, non-contributory basis, in a written contract or written agreement executed prior to loss, except where such contract or agreement is prohibited by law.</p> |
| <p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>  |

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I – Covered Autos Coverages of the Auto Dealers Coverage Form.

# Coverage Extension Endorsement



| Policy No.     | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Producer No. | Add'l. Prem | Return Prem. |
|----------------|-------------------|-------------------|-------------------|--------------|-------------|--------------|
| BAP 8714365-01 | 03/05/2021        | 03/05/2022        | 03/05/2021        |              |             |              |

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Business Auto Coverage Form  
Motor Carrier Coverage Form**

## A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- c. Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
- d. Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

## B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

**C. Fellow Employee Coverage**

The **Fellow Employee** Exclusion contained in **Section II – Covered Autos Liability Coverage** does not apply.

**D. Driver Safety Program Liability and Physical Damage Coverage**

1. The following is added to the **Racing** Exclusion in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph 2. in the **Exclusions of Section III – Physical Damage Coverage** of the **Business Auto Coverage Form** and Paragraph 2.b. in the **Exclusions of Section IV – Physical Damage Coverage** of the **Motor Carrier Coverage Form**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

**E. Lease or Loan Gap Coverage**

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

**Lease Or Loan Gap Coverage**

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. Any amount paid under the **Physical Damage Coverage** Section of the Coverage Form; and
- b. Any:
  - (1) Overdue lease or loan payments at the time of the "loss";
  - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (3) Security deposits not returned by the lessor;
  - (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and
  - (5) Carry-over balances from previous leases or loans.

**F. Towing and Labor**

Paragraph **A.2.** of the **Physical Damage Coverage** Section is replaced by the following:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

**G. Extended Glass Coverage**

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

**H. Hired Auto Physical Damage – Increased Loss of Use Expenses**

The **Coverage Extension** for **Loss Of Use Expenses** in the **Physical Damage Coverage** Section is replaced by the following:

**Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:



- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

#### I. Personal Effects Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

##### Personal Effects Coverage

- a. We will pay up to \$750 for "loss" to personal effects which are:
  - (1) Personal property owned by an "insured"; and
  - (2) In or on a covered "auto".
- b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:
  - (1) The reasonable cost to replace; or
  - (2) The actual cash value.
- c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:
  - (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
  - (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
  - (3) Paintings, statuary and other works of art.
  - (4) Contraband or property in the course of illegal transportation or trade.
  - (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

#### J. Tapes, Records and Discs Coverage

1. The Exclusion in Paragraph B.4.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply.
2. The following is added to Paragraph 1.a. **Comprehensive Coverage** under the **Coverage** Provision of the **Physical Damage Coverage** Section:

We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- (a) Are the property of an "insured"; and
- (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The **Physical Damage Coverage Deductible** Provision does not apply to such "loss".

**K. Airbag Coverage**

The Exclusion in Paragraph **B.3.a.** of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph **B.4.a.** of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

**L. Two or More Deductibles**

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

**M. Physical Damage – Comprehensive Coverage – Deductible**

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

Regardless of the number of covered "autos" damaged or stolen, the maximum deductible that will be applied to Comprehensive Coverage for all "loss" from any one cause is \$5,000 or the deductible shown in the Declarations, whichever is greater.

**N. Temporary Substitute Autos – Physical Damage**

1. The following is added to **Section I – Covered Autos**:

**Temporary Substitute Autos – Physical Damage**

If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
2. Repair;
3. Servicing;
4. "Loss"; or
5. Destruction.

2. The following is added to the Paragraph **A. Coverage** Provision of the **Physical Damage Coverage** Section:

**Temporary Substitute Autos – Physical Damage**

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

**O. Amended Duties In The Event Of Accident, Claim, Suit Or Loss**

Paragraph **a.** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any

agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

#### **P. Waiver of Transfer Of Rights Of Recovery Against Others To Us**

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

#### **Q. Employee Hired Autos – Physical Damage**

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

#### **R. Unintentional Failure to Disclose Hazards**

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

#### **S. Hired Auto – World Wide Coverage**

Paragraph **7a.(5)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

#### **T. Bodily Injury Redefined**

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

**U. Expected Or Intended Injury**

The **Expected Or Intended Injury** Exclusion in Paragraph **B. Exclusions** under **Section II – Covered Auto Liability Coverage** is replaced by the following:

**Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**V. Physical Damage – Additional Temporary Transportation Expense Coverage**

Paragraph **A.4.a.** of **Section III – Physical Damage Coverage** is replaced by the following:

**4. Coverage Extensions**

**a. Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

**W. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto**

The following is added to Paragraph **A. Coverage** of the **Physical Damage Coverage** Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

**X. Return of Stolen Automobile**

The following is added to the **Coverage Extension** Provision of the **Physical Damage Coverage** Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.



**ZURICH**

## **Blanket Notification to Others of Cancellation or Non-Renewal**

| Policy No.     | Eff. Date of Pol. | Exp. Date of Pol. | Eff. Date of End. | Producer No. | Add'l. Prem | Return Prem. |
|----------------|-------------------|-------------------|-------------------|--------------|-------------|--------------|
| BAP 8714365-01 | 03/05/2021        | 03/05/2022        | 03/05/2021        |              |             |              |

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

### **Commercial Automobile Coverage Part**

- A.** If we cancel or non-renew this Coverage Part by written notice to the first Named Insured, we will mail or deliver notification that such Coverage Part has been cancelled or non-renewed to each person or organization shown in a list provided to us by the first Named Insured if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to the first Named Insured. Such list:
1. Must be provided to us prior to cancellation or non-renewal;
  2. Must contain the names and addresses of only the persons or organizations requiring notification that such Coverage Part has been cancelled or non-renewed; and
  3. Must be in an electronic format that is acceptable to us.
- B.** Our notification as described in Paragraph **A.** of this endorsement will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to the first Named Insured. We will mail or deliver such notification to each person or organization shown in the list:
1. Within seven days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
  2. At least 30 days prior to the effective date of:
    - a. Cancellation, if cancelled for any reason other than nonpayment of premium; or
    - b. Non-renewal, but not including conditional notice of renewal.
- C.** Our mailing or delivery of notification described in Paragraphs **A.** and **B.** of this endorsement is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
1. Extend the Coverage Part cancellation or non-renewal date;
  2. Negate the cancellation or non-renewal; or
  3. Provide any additional insurance that would not have been provided in the absence of this endorsement.
- D.** We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs **A.** and **B.** of this endorsement.

All other terms and conditions of this policy remain unchanged.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. ( ) Specific Waiver

Name of person or organization

( X ) Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

3. Premium:

The premium charge for this endorsement shall be \_\_\_\_\_ percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium:

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 03/05/2021  
Insured Hellas Construction, Inc.

Policy No. WC 8714364-01

Endorsement No.  
Premium

Zurich American Insurance Company

Countersigned by \_\_\_\_\_



**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR THAT PERSON AND/OR ORGANIZATION

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement 03/05/2021

Effective Policy No. WC 8714364-01

Endorsement No.

Insured Hellas Construction, Inc.

Premium \$

Zurich American Insurance Company

Countersigned by \_\_\_\_\_

---

**BLANKET NOTIFICATION TO OTHERS OF CANCELLATION OR NONRENEWAL ENDORSEMENT**

This endorsement adds the following to Part Six of the policy.

**PART SIX  
CONDITIONS****Blanket Notification to Others of Cancellation or Nonrenewal**

1. If we cancel or non-renew this policy by written notice to you, we will mail or deliver notification that such policy has been cancelled or non-renewed to each person or organization shown in a list provided to us by you if you are required by written contract or written agreement to provide such notification. However, such notification will not be mailed or delivered if a conditional notice of renewal has been sent to you. Such list:
  - a. Must be provided to us prior to cancellation or non-renewal;
  - b. Must contain the names and addresses of only the persons or organizations requiring notification that such policy has been cancelled or non-renewed; and
  - c. Must be in an electronic format that is acceptable to us.
2. Our notification as described in Paragraph 1. above will be based on the most recent list in our records as of the date the notice of cancellation or non-renewal is mailed or delivered to you. We will mail or deliver such notification to each person or organization shown in the list:
  - a. Within seven days of the effective date of the notice of cancellation, if we cancel for non-payment of premium; or
  - b. At least 30 days prior to the effective date of:
    - (1) Cancellation, if cancelled for any reason other than nonpayment of premium; or
    - (2) Non-renewal, but not including conditional notice of renewal.
3. Our mailing or delivery of notification described in Paragraphs 1. and 2. above is intended as a courtesy only. Our failure to provide such mailing or delivery will not:
  - a. Extend the policy cancellation or non-renewal date;
  - b. Negate the cancellation or non-renewal; or
  - c. Provide any additional insurance that would not have been provided in the absence of this endorsement.
4. We are not responsible for the accuracy, integrity, timeliness and validity of information contained in the list provided to us as described in Paragraphs 1. and 2. above.

All other terms and conditions of this policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective 03/05/2021  
Insured Hellas Construction, Inc.

Policy No. WC 8714364-01

Endorsement No.  
Premium \$

Zurich American Insurance Company

EXHIBIT E

to

Agreement dated February 28, 2022 between  
McAllen Independent School District and Hellas Construction, Inc.  
(RFCQ 2022-1037 Synthetic Turf for Baseball and Softball Fields at McAllen High School, McAllen Memorial High School, and James Nikki Rowe High School (Owner Contract No. 2022-179))

Plans and/or Specifications

*(Table deleted)*

**McALLEN INDEPENDENT SCHOOL DISTRICT**

**SYNTHETIC TURF FOR BASEBALL AND SOFTBALL FIELDS  
AT  
MCALLEN HIGH SCHOOL, MCALLEN MEMORIAL HIGH  
SCHOOL AND JAMES “NIKKI” ROWE HIGH SCHOOL**

**Prepared By:**

**JAVIER HINOJOSA ENGINEERING  
416 E. DOVE AVENUE  
McALLEN, TEXAS 78504  
(956) 668-1588  
javier@javierhinojosaeng.com  
TBPELS FIRM NO. F-1295**



*Javier Hinojosa*  
11/19/22

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  - McAllen Memorial High School
  - James “Nikki” Rowe High School
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3. Proposal Form
4. Geotechnical Reports
  - McAllen High School
  - McAllen Memorial High School
  - James “Nikki” Rowe High School
5. Specifications
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  - 02102 Clearing and Grubbing
  - 02210 Subgrade Preparation
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  - 02240 Lime Stabilization
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  - 19000 Trench Protection
  - General Conditions of Contract for Engineering Construction

**PROPOSED SYNTHETIC TURF LAYOUT FOR  
BASEBALL AND SOFTBALL FIELDS  
FOR**

- **McALLEN HIGH SCHOOL**
- **McALLEN MEMORIAL HIGH SCHOOL**
- **JAMES "NIKKI" ROWE HIGH SCHOOL**





SCALE: 1" = 30'

- LEGEND:**
- ⊛ LIGHT POLE
  - ⊚ POWER POLE
  - GUY WIRE
  - ⊙ SANITARY SEWER MANHOLE
  - ⊙ WATER VALVE
  - ⊙ WATER FACET
  - ⊙ ELECTRIC TRANSFORMER
  - ⊙ ELECTRIC PANEL
  - ⊙ WATER METER
  - ⊙ SPRINKLER VALVE
  - ⊙ FIRE HYDRANT
  - ⊙ SPRINKLER HEAD
  - ⊙ NATURAL GROUND ELEVATION
  - ⊙ TOP OF CURB ELEVATION
  - ⊙ FINISH FLOOR ELEVATION
  - 1"W — EXIST. 1" WATER LINE
  - 3"W — EXIST. 3" WATER LINE
  - 4"W — EXIST. 4" WATER LINE
  - 8"W — EXIST. 8" WATER LINE
  - 4"SS — EXIST. 4" SEWER SERVICE LINE
  - 8"SS — EXIST. 8" SEWER SERVICE LINE
  - 15"D — EXIST. 15" STORM DRAIN LINE
  - OE — EXIST. OVERHEAD ELECTRIC LINE
  - FO — EXIST. FIBER OPTIC CABLE LINE
  - ATT — EXIST. AT&T TELEPHONE LINE
  - TGS — EXIST. 2" TEXAS GAS LINE
  - GAS — EXIST. TEXAS GAS LINE
  - EXIST. WOOD FENCE
  - EXIST. CHAIN LINK FENCE
  - EXIST. ASPHALT PAVING
  - EXIST. CONCRETE PAVING/SIDEWALK

|               |
|---------------|
| 210801        |
| PROJECT NO.   |
| JANUARY, 2022 |
| DATE          |
| P.G. & A.G.   |
| DESIGN BY     |
| J.H.          |
| CHECK BY      |



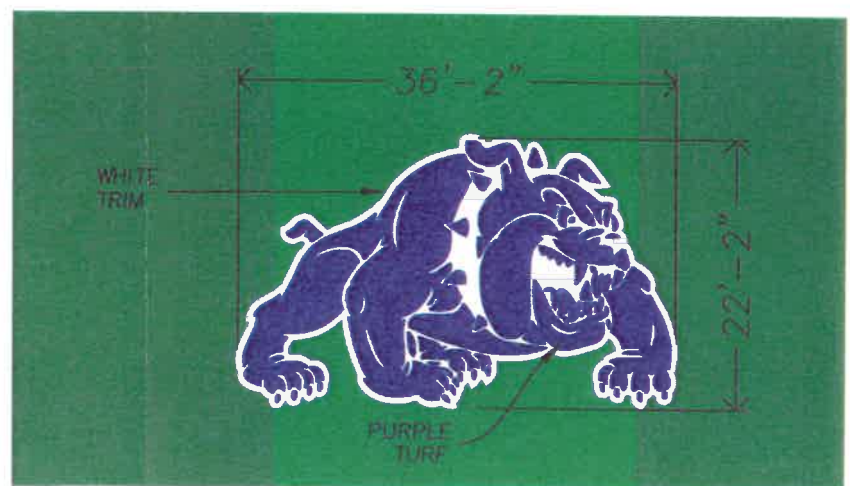
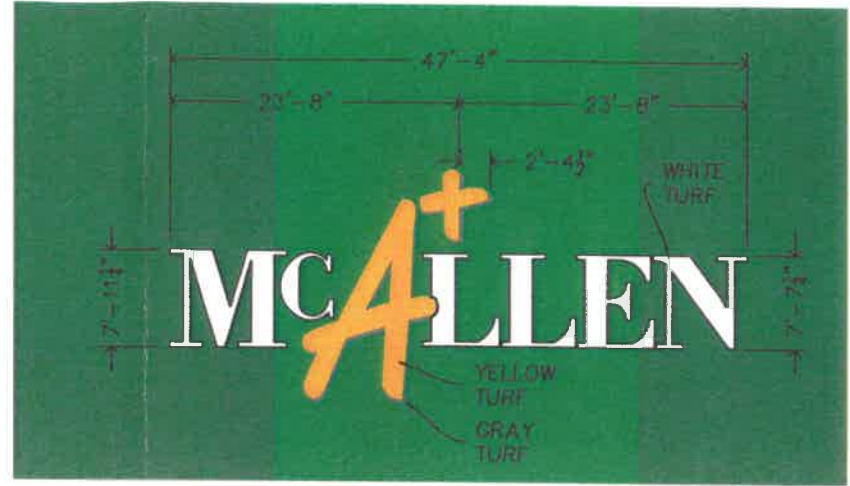
**JAVIER HINOJOSA ENGINEERING**  
 CONSULTING ENGINEERS  
 416 E. DOVE AVENUE McALLEN, TEXAS 78504  
 PHONE (956) 688-1588  
 javier@javierhinojosaeng.com  
 TBPELS FIRM NUMBER F-1295

PROPOSED COLOR RENDERING  
 McALLEN I.S.D. McALLEN HIGH SCHOOL BASEBALL FIELD  
 McALLEN TEXAS



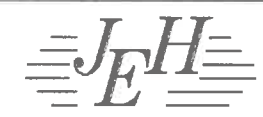


SCALE: 1" = 30'



- LEGEND:**
- ⊙ LIGHT POLE
  - ⊕ POWER POLE
  - GUY WIRE
  - ⊙ SANITARY SEWER MANHOLE
  - ⊙ WATER VALVE
  - ⊕ WATER FAUCET
  - ⊕ ELECTRIC TRANSFORMER
  - ⊕ ELECTRIC PANEL
  - ⊕ WATER METER
  - ⊕ SPRINKLER VALVE
  - ⊕ FIRE HYDRANT
  - ⊕ SPRINKLER HEAD
  - x114.85 = NATURAL GROUND ELEVATION
  - TOC=113.74 = TOP OF CURB ELEVATION
  - FF=116.36 = FINISH FLOOR ELEVATION
  - 1" W — EXIST. 1" WATER LINE
  - 3" W — EXIST. 3" WATER LINE
  - 4" W — EXIST. 4" WATER LINE
  - 8" W — EXIST. 8" WATER LINE
  - 4" SS — EXIST. 4" SEWER SERVICE LINE
  - 6" SS — EXIST. 6" SEWER SERVICE LINE
  - 15" D — EXIST. 15" STORM DRAIN LINE
  - OE — EXIST. OVERHEAD ELECTRIC LINE
  - FO — EXIST. FIBER OPTIC CABLE LINE
  - AT — EXIST. AT&T TELEPHONE LINE
  - 2" G — EXIST. 2" TEXAS GAS LINE
  - GAS — EXIST. TEXAS GAS LINE
  - W — EXIST. WOOD FENCE
  - CL — EXIST. CHAIN LINK FENCE
  - ▨ EXIST. ASPHALT PAVING
  - ▨ EXIST. CONCRETE PAVING/SIDEWALK

|               |
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| 210801        |
| PROJECT NO.   |
| JANUARY, 2022 |
| DATE:         |
| P.G. & A.G.   |
| DRAWN BY:     |
| J.H.          |
| CHEK BY:      |



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 PHONE (956) 688-1588  
 javier@javierhinojosaeeng.com  
 TBPELS FIRM NUMBER F-1295

329
































PROPOSED COLOR RENDERING  
 McALLEN I.S.D. McALLEN HIGH SCHOOL SOFTBALL FIELD  
 McALLEN TEXAS

SHEET  
 13  
 of 39 sheets

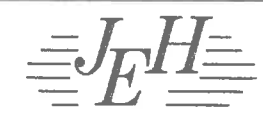




  
 SCALE: 1" = 30'

- LEGEND:**
-  LIGHT POLE
  -  POWER POLE
  -  GUY WIRE
  -  SANITARY SEWER MANHOLE
  -  WATER VALVE
  -  WATER FAUCET
  -  ELECTRIC TRANSFORMER
  -  ELECTRIC PANEL
  -  WATER METER
  -  SPRINKLER VALVE
  -  FIRE HYDRANT
  -  SPRINKLER HEAD
  -  \*114.85 = NATURAL GROUND ELEVATION
  -  TOC=113.74 = TOP OF CURB ELEVATION
  -  F.F.=118.36 = FINISH FLOOR ELEVATION
  -  1"W --- EXIST. 1" WATER LINE
  -  3"W --- EXIST. 3" WATER LINE
  -  4"W --- EXIST. 4" WATER LINE
  -  6"W --- EXIST. 6" WATER LINE
  -  4"SS --- EXIST. 4" SEWER SERVICE LINE
  -  6"SS --- EXIST. 6" SEWER SERVICE LINE
  -  15"D --- EXIST. 15" STORM DRAIN LINE
  -  OE --- EXIST. OVERHEAD ELECTRIC LINE
  -  FO --- EXIST. FIBER OPTIC CABLE LINE
  -  ATT --- EXIST. AT&T TELEPHONE LINE
  -  2"G --- EXIST. 2" TEXAS GAS LINE
  -  GAS --- EXIST. TEXAS GAS LINE
  -  --- EXIST. WOOD FENCE
  -  --- EXIST. CHAIN LINK FENCE
  -  --- EXIST. ASPHALT PAVING
  -  --- EXIST. CONCRETE PAVING/SIDEWALK

|               |
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| 210801        |
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| J.H.          |
| CHECK BY      |



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 416 E. DOVE AVENUE McALLEN, TEXAS 78504  
 PHONE (956) 668-1588  
 javier@javierhinojosaeng.com  
 TBPELS FIRM NUMBER F-1295

330

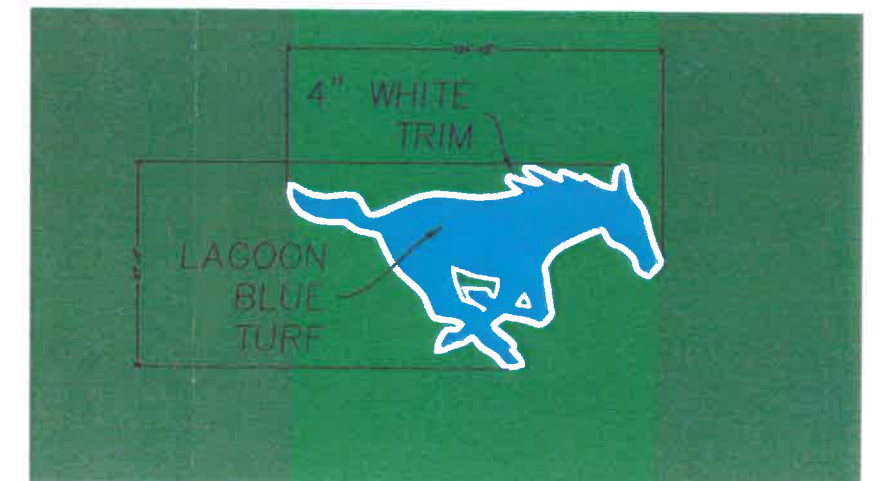
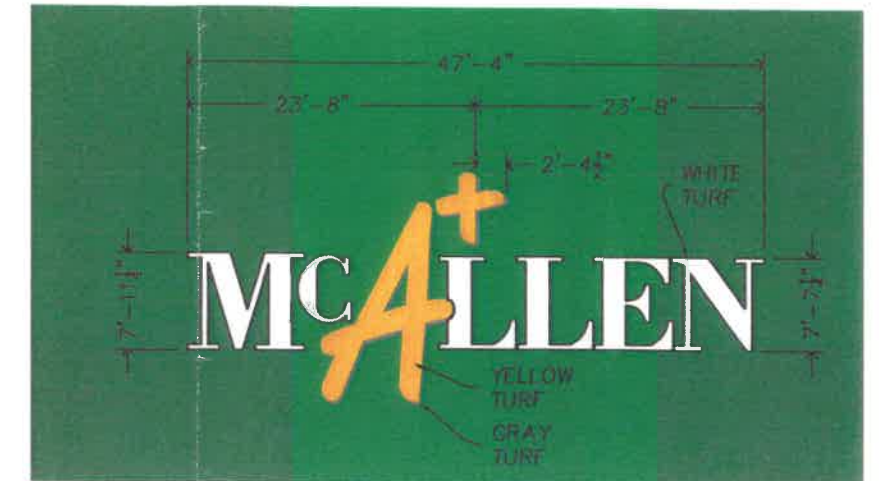
PROPOSED COLOR RENDERING  
 McALLEN I.S.D. MEMORIAL HIGH SCHOOL BASEBALL FIELD  
 McALLEN TEXAS

SHEET  
**19**  
 of 39 sheets





SCALE: 1" = 30'



**LEGEND:**

- ☉ LIGHT POLE
- ⚡ POWER POLE
- GUY WIRE
- ⊙ SANITARY SEWER MANHOLE
- ⊙ WATER VALVE
- ⊙ WATER FALCET
- ⊙ ELECTRIC TRANSFORMER
- ⊙ ELECTRIC PANEL
- ⊙ WATER METER
- ⊙ SPRINKLER VALVE
- ⊙ FIRE HYDRANT
- ⊙ SPRINKLER HEAD
- ⊙ 114.55 = NATURAL GROUND ELEVATION
- ⊙ 113.74 = TOP OF CURB ELEVATION
- ⊙ 118.36 = FINISH FLOOR ELEVATION
- 1" W — EXIST. 1" WATER LINE
- 3" W — EXIST. 3" WATER LINE
- 4" W — EXIST. 4" WATER LINE
- 6" W — EXIST. 6" WATER LINE
- 4" SS — EXIST. 4" SEWER SERVICE LINE
- 6" SS — EXIST. 6" SEWER SERVICE LINE
- 18" D — EXIST. 18" STORM DRAIN LINE
- OE — EXIST. OVERHEAD ELECTRIC LINE
- FO — EXIST. FIBER OPTIC CABLE LINE
- ATT — EXIST. AT&T TELEPHONE LINE
- 2" G — EXIST. 2" TEXAS GAS LINE
- GAS — EXIST. TEXAS GAS LINE
- EXIST. WOOD FENCE
- EXIST. CHAIN LINK FENCE
- ▨ EXIST. ASPHALT PAVING
- ▨ EXIST. CONCRETE PAVING/SIDEWALK

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| 210801        |
| PROJECT No.   |
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| P.G. & A.G.   |
| DRAWN BY      |
| J.H.          |
| CHK. BY:      |



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 javier@javierhinojosae.com  
 TBPELS FIRM NUMBER F-1295

331

PROPOSED COLOR RENDERING  
 McALLEN I.S.D. MEMORIAL HIGH SCHOOL SOFTBALL FIELD  
 McALLEN TEXAS

SHEET  
 25  
 of 39 sheets





SCALE: 1" = 30'

**LEGEND:**

- ⊛ LIGHT POLE
- ⊚ POWER POLE
- 60V WIC
- ⊙ SANITARY SEWER MANHOLE
- ⊙ WATER VALVE
- ⊙ WATER FAUCET
- ⊙ ELECTRIC TRANSFORMER
- ⊙ ELECTRIC PANEL
- ⊙ WATER METER
- ⊙ SPRINKLER VALVE
- ⊙ FIRE HYDRANT
- ⊙ SPRINKLER HEAD
- x114.85 = NATURAL GROUND ELEVATION
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- F.F.=116.36 = FINISH FLOOR ELEVATION
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- 4"W — EXIST. 4" WATER LINE
- 8"W — EXIST. 8" WATER LINE
- 4"SS — EXIST. 4" SEWER SERVICE LINE
- 8"SS — EXIST. 8" SEWER SERVICE LINE
- 15"D — EXIST. 15" STORM DRAIN LINE
- OE — EXIST. OVERHEAD ELECTRIC LINE
- FO — EXIST. FIBER OPTIC CABLE LINE
- ATT — EXIST. AT&T TELEPHONE LINE
- 2"O — EXIST. 2" TEXAS GAS LINE
- GAS — EXIST. TEXAS GAS LINE
- EXIST. WOOD FENCE
- EXIST. CHAIN LINK FENCE
- ▨ EXIST. ASPHALT PAVING
- ▨ EXIST. CONCRETE PAVING/SIDEWALK

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| 210801        |
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| JANUARY, 2022 |
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| P.C. & A.G.   |
| DRAWN BY      |
| J.H.          |
| CHK. BY       |



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 PHONE (956) 668-1508  
 javier@javierhinojosaeeng.com  
 TBPELS FIRM NUMBER F-1295

332

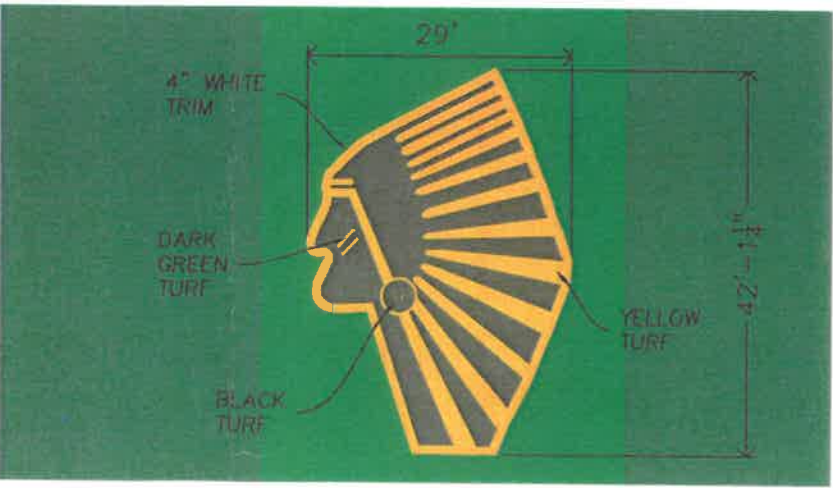
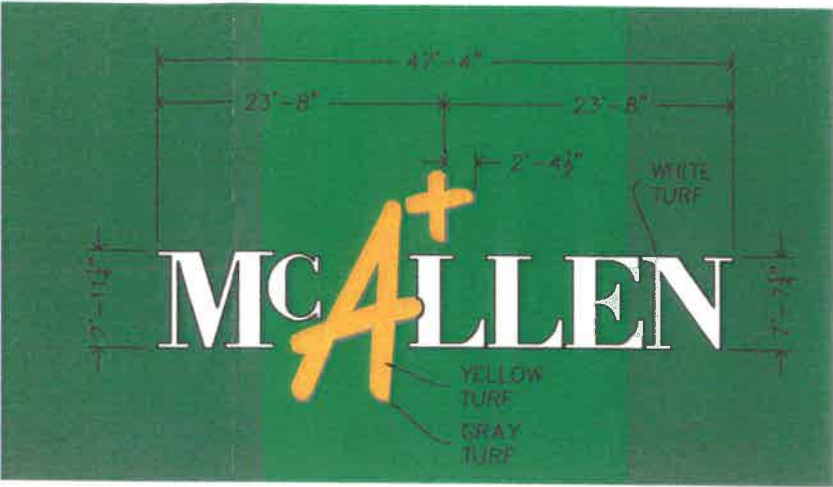
PROPOSED COLOR RENDERING  
 McALLEN I.S.D. JAMES "NIKKI" ROWE HIGH SCHOOL BASEBALL FIELD  
 McALLEN TEXAS

SHEET  
**31**  
 of 39 sheets





SCALE: 1" = 30'



LEGEND:

- ⊙ LIGHT POLE
- ⊙ POWER POLE
- GUY WIRE
- ⊙ SANITARY SEWER MANHOLE
- ⊙ WATER VALVE
- ⊙ WATER FAUCET
- ⊙ ELECTRIC TRANSFORMER
- ⊙ ELECTRIC PANEL
- ⊙ WATER METER
- ⊙ SPRINKLER VALVE
- ⊙ FIRE HYDRANT
- ⊙ SPRINKLER HEAD
- x114.85 = NATURAL GROUND ELEVATION
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- F.F.=118.38 = FINISH FLOOR ELEVATION
- 1" — EXIST. 1" WATER LINE
- 3"W — EXIST. 3" WATER LINE
- 4"W — EXIST. 4" WATER LINE
- 6"W — EXIST. 6" WATER LINE
- 4"SS — EXIST. 4" SEWER SERVICE LINE
- 6"SS — EXIST. 6" SEWER SERVICE LINE
- 15"D — EXIST. 15" STORM DRAIN LINE
- OE — EXIST. OVERHEAD ELECTRIC LINE
- FO — EXIST. FIBER OPTIC CABLE LINE
- ATT — EXIST. AT&T TELEPHONE LINE
- 2"O — EXIST. 2" TEXAS GAS LINE
- GAS — EXIST. TEXAS GAS LINE
- WOOD — EXIST. WOOD FENCE
- CHAIN — EXIST. CHAIN LINK FENCE
- ▨ EXIST. ASPHALT PAVING
- ▨ EXIST. CONCRETE PAVING/SIDEWALK

|               |
|---------------|
| 210801        |
| PROJECT NO.   |
| JANUARY, 2022 |
| DATE          |
| P.G. & A.G.   |
| DRAWN BY      |
| J.H.          |
| CHECK BY:     |



**JAVIER HINOJOSA ENGINEERING**  
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 416 E. DOVE AVENUE McALLEN, TEXAS 78504  
 PHONE (956) 888-1588  
 javier@javierhinojosae.com  
 TBPELS FIRM NUMBER F-1295

PROPOSED COLOR RENDERING  
 McALLEN I.S.D. JAMES "NIKKI" ROWE HIGH SCHOOL SOFTBALL FIELD  
 McALLEN TEXAS



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**SPECIAL PROVISIONS / SCOPE OF WORK**

## **SPECIAL PROVISIONS / SCOPE OF WORK**

1. The Contractor will provide project Insurance along with a Payment and Performance Bond for the work.
2. The base bid for the synthetic turf will consist of a Matrix 46 HELIX synthetic turf system or a XM-6 synthetic turf system or an approved equal. The turf system shall consist of 46 ounces per square yard of turf and a minimum of 6 pounds per square foot of rubber and sand infill.
3. An allowance is indicated on the bid sheet for subgrade stabilization if required during construction. This stabilization shall consist of 12" subgrade utilizing 3% lime.
4. Liquidated damages in the amount of \$1,500.00 per day for substantial completion and \$500.00 per day for final completion shall be enforced. Final completion to be accomplished 30 days after substantial completion has been reached.
5. The Contractor will provide construction surveying, layout and staking.
6. The Contractor will provide six sets of shop drawings prior to commencement of construction.
7. The Contractor will conduct a semimonthly construction site meeting.
8. The Contractor will provide final punch-out and clean-up of the completed project.
9. The Contractor will strip vegetation (approx. 4" depth) and excavate proposed turf area to design subgrade elevations; all excavated materials shall be disposed offsite.
10. The Contractor will demolish and remove the existing sprinkler system located within each field. The main point of access for the waterline shall be capped.
11. After demolition and excavation operations have been completed, the Contractor will moisture condition and compact subgrade to design specifications. (95% compaction)
12. The Contractor will excavate at the synthetic turf field exterior perimeter for HDPE collector drain system and all excavated material shall be disposed offsite.
13. The Contractor will provide and install 20 mil liner (or manufacturer equal) and attached to the turf anchor system.
14. The Contractor will provide and install the HDPE perforated collector line along the interior perimeter of the field and the collector line will be connected as shown on the plans.

15. The Contractor will provide a 2"X4" pressure treated turf anchor system and attach to interior concrete perimeter curb.
16. The Contractor will provide and install 1"X12" Hydraway™ drain lines at 35' center-to-center in herringbone pattern; each of the lines will drain to the HDPE collector perimeter drain line.
17. The Contractor will provide and install 5"-6" (nominal thickness) 'S 200' drain stone mix, laser grade and compact to proper density.
18. The Contractor will provide and install Matrix® 46 HELIX or XM-6 or approved equal synthetic turf system with the noted installation options listed below:
  - All baseball field markings shall be permanently installed in white turf as shown on plans
  - All seams to be glued
  - All logos permanently installed as shown on the plans
  - Installation of selected aggregated and cuboidal "SBR" rubber
  - 1 tow-behind, ground driven sweeper
  - Provide 8-year manufacturer warranty
19. After synthetic turf installation is complete, the Contractor will provide an operation and maintenance orientation for care of the turf field, and all of the supplied equipment quoted above.
20. The Geotechnical Report provided herein is for reference purposes only. Subgrade testing will be performed during construction in order to determine the need for subgrade stabilization.

## GEOTECHNICAL REPORTS

- McALLEN HIGH SCHOOL
- McALLEN MEMORIAL HIGH SCHOOL
- JAMES "NIKKI" ROWE HIGH SCHOOL



# Geotechnical Engineering Report

**McHi High School Softball & Baseball Fields Artificial Turf**

**McAllen, Texas**

November 8, 2021

Terracon Project No. 88215141

**Prepared for:**

McAllen Independent School District

McAllen, Texas

**Prepared by:**

Terracon Consultants, Inc.

Pharr, Texas



November 8, 2021



McAllen Independent School District  
4309 Warrior Dr  
McAllen, Texas 78501-3396

Attn: Ms. Melissa Ortiz  
P: (956) 632-3200  
E: melissa.ortiz@mcallenisd.net

Re: Geotechnical Engineering Report  
McHi High School Softball & Baseball Fields Artificial Turf  
2021 La Vista Ave  
McAllen, Texas  
Terracon Project No. 88215141

Dear Mr. Ortiz,

We have completed the Geotechnical Engineering services for the above referenced project. This study was performed in general accordance with Terracon Proposal No. P88215117 dated August 9, 2021. This report presents the findings of the subsurface exploration and provides geotechnical recommendations concerning earthwork for the proposed project.

We appreciate the opportunity to be of service to you on this project. If you have any questions concerning this report or if we may be of further service, please contact us.

Sincerely,  
**Terracon Consultants, Inc.**  
(Texas Firm Registration No.: F-3272)

S. Mustapha Rahmaninezhad, Ph.D.  
Senior Engineer



11/8/21

Alfonso A. Soto, P.E., D.GE  
Principal



## REPORT TOPICS

|                                    |    |
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**Note:** This report was originally delivered in a web-based format. **Orange Bold** text in the report indicates a referenced section heading. The PDF version also includes hyperlinks which direct the reader to that section and clicking on the **GeoReport** logo will bring you back to this page. For more interactive features, please view your project online at [client.terracon.com](http://client.terracon.com).

## ATTACHMENTS

**EXPLORATION AND TESTING PROCEDURES**  
**SITE LOCATION AND EXPLORATION PLANS**  
**EXPLORATION RESULTS**  
**SUPPORTING INFORMATION**

**Note:** Refer to each individual Attachment for a listing of contents.

**Geotechnical Engineering Report**  
**McHi High School Softball & Baseball Fields Artificial Turf**  
**2021 La Vista Ave**  
**McAllen, Texas**  
**Terracon Project No. 88215141**  
**November 8, 2021**

**INTRODUCTION**

This report presents the results of our subsurface exploration and geotechnical engineering services performed for the proposed McHi High School Softball & Baseball Fields Artificial Turf located at 2021 La Vista Ave in McAllen, Texas. The purpose of these services is to provide information and geotechnical engineering recommendations relative to:

- Subsurface soil conditions
- Groundwater conditions
- Site preparation and earthwork
- Turf design guidelines

The geotechnical engineering Scope of Services for this project included the advancement of 7 test borings to depths of 10 feet below existing site grades.

Maps showing the site and boring locations are presented in the **Site Location** and **Exploration Plan** sections, respectively. The results of the laboratory testing performed on soil samples obtained from the site during the field exploration are included on the boring logs in the **Exploration Results** section.

**SITE CONDITIONS**

The following description of site conditions is derived from our site visit in association with the field exploration and our review of publicly available geologic and topographic maps.

| Item                         | Description   |
|------------------------------|---|
| <b>Parcel Information</b>    | The project site is located at 2021 La Vista Ave in McAllen, Texas.<br>Baseball Field: Latitude/Longitude: 26.224478° N, 98.240618° W.<br>Softball Field: Latitude/Longitude: 26.225946° N, 98.240190° W.<br>See <b>Site Location</b> |
| <b>Existing Improvements</b> | Existing softball and baseball fields.  |
| <b>Current Ground Cover</b>  | Planted grass.  |
| <b>Existing Topography</b>   | Relatively flat and level.  |

| Item           | Description  |
|----------------|--|
| <b>Geology</b> | Based on the Geologic Atlas of Texas, McAllen – Brownsville prepared by The University of Texas, the site is located on the Beaumont Formation of the Pleistocene Period of the Quaternary Age. The soils are mostly composed of clay, silt, sand, and gravel and include mainly stream channel, point bar, natural levee and backswamp deposits. Concretions and massive accumulations of calcium carbonate (caliche) and concretions of iron oxide and iron-manganese oxides can be found in the zone of weathering. In particular, the site is located in areas that are dominantly clay and mud of low permeability, high water-holding capacity, high compressibility, high to very high shrink-swell potential, poor drainage, level to depressed relief, low shear strength and high plasticity. Geologic units include interdistributary muds, abandoned channel-fill muds, and fluvial overbank muds. |

## PROJECT DESCRIPTION

| Item                       | Description   |
|----------------------------|---|
| <b>Project Description</b> | The project consists of upgrading the baseball and softball fields to synthetic turf. |

## GEOTECHNICAL CHARACTERIZATION

We have developed a general characterization of the subsurface conditions based upon our review of the subsurface exploration, laboratory data, geologic setting and our understanding of the project. This characterization, termed GeoModel, forms the basis of our geotechnical calculations and evaluation of site preparation and foundation options. Conditions encountered at each exploration point are indicated on the individual logs. The individual logs and the GeoModel can be found in the **Exploration Results** section of this report.

As part of our analyses, we identified the following model layers within the subsurface profile. For a more detailed view of the model layer depths at each boring location, refer to the GeoModel.

| Model Layer | Layer Name  | General Description  |
|-------------|-------------|--|
| 1           | <b>SAND</b> | Clayey Sand (SC)<br>Very loose to medium dense                               |
| 2           | <b>CLAY</b> | Sandy lean clay, Lean clay with sand (CL), and Fat Clay (CH)<br>Soft to hard |

## **Groundwater Conditions**

The boreholes were drilled to their termination depths (10 feet) using dry drilling techniques to aid in the observation of groundwater. Groundwater was not observed in the borings while drilling, or for the short duration that the borings were allowed to remain open. The boreholes can be found on the boring logs in **Exploration Results**.

Groundwater level fluctuations occur due to seasonal variations in the amount of rainfall, runoff and other factors not evident at the time the borings were performed. Therefore, groundwater levels during construction or at other times in the life of the structure may be higher or lower than the levels indicated on the boring logs. The possibility of groundwater level fluctuations should be considered when developing the design and construction plans for the project. The boreholes were backfilled with on-site soil cuttings after completion of the groundwater level observations.

## **GEOTECHNICAL OVERVIEW**

Final grading for the proposed fields was not available at the time of this report. However, we anticipate that the new surface will have a final grade elevation at or near existing grade. If this information changes, we should be contacted to review and revise our recommendation as appropriate.

The near surface soils could become unstable with typical earthwork and construction traffic, especially after precipitation events. The effective drainage should be completed early in the construction sequence and maintained after construction to avoid potential issues. If possible, the grading should be performed during the warmer and drier times of the year. If grading is performed during the winter months, an increased risk for possible undercutting and replacement of unstable subgrade will persist. Additional site preparation recommendations, including subgrade improvement and fill placement, are provided in the **Earthwork** section.

Ground movements at this site would most likely be related to vertical movements associated with expansive soils. These vertical soil movements can occur differentially and create cracks in the aggregate base. Additionally, base will weather with time becoming harder, less flexible (more brittle) and more subject to cracking. Water may enter cracks in the base which can lead to weakening of the material bonds and further degradation of the section. Some options can be implemented during construction of the new field to help reduce differential movements and cracking. Some of these options include the following:

- Reducing the Potential Vertical Rise (PVR) of the subgrade soils;
- Providing and maintaining positive drainage; and
- Providing subsurface drainage to collect and remove infiltrating water.

Even with the above options, some periodic maintenance should be expected.

The subsurface soils at this site generally exhibit a moderate expansion potential. Based on the information developed from our field and laboratory programs and on method TEX-124-E in the Texas Department of Transportation (TxDOT) Manual of Testing Procedures, we estimate that the subgrade soils at this site exhibit a Potential Vertical Rise (PVR) of about 1 inch in present condition.

## **EARTHWORK**

The construction areas should be stripped of any grass, topsoil, construction debris and other unsuitable materials. The following sections provide recommendations for use in the preparation of specifications for the work. Recommendations include critical quality criteria, as necessary, to render the site in the state considered in our geotechnical engineering evaluation for a new artificial turf.

### **Site Preparation**

Prior to placing fill, any buried structures and vegetation should be removed. Complete stripping of the topsoil should be performed in the field areas.

Once final subgrade elevations have been achieved, the exposed subgrade should be carefully proofrolled with a 15-ton pneumatic roller or a fully loaded dump truck to detect weak zones in the subgrade. Special care should be exercised when proofrolling the fill soils to detect soft/weak areas. Weak areas observed may be replaced with clean on-site soils or select fill. Proper site drainage should be maintained during construction so that ponding of surface runoff does not occur and causes construction delays and/or inhibit site access.

Subsequent to proofrolling, and just prior to placement of fill, the exposed subgrade within the construction area should be evaluated for moisture and density. If the moisture, density, and/or the requirements do not meet project requirements, the subgrade should be scarified to a minimum depth of 8 inches, moisture adjusted and compacted to at least 95 percent of the Standard Effort (ASTM D 698) maximum dry density.

### **Fill Material Types**

Engineered fill should consist of approved materials, free of organic material, debris and particles larger than about 2 inches. The maximum particle size criteria may be relaxed by the geotechnical engineer of record depending on construction techniques, material gradation, allowable lift thickness and observations during fill placement. Soils for use as engineered fill material should conform to the following specifications:

| Fill Type <sup>1</sup>                                | USCS Classification           | Acceptable Location for Placement  |
|---|-------------------------------|--|
| <b>Aggregate Base and Subbase Course</b> <sup>2</sup> | Varies                        | Can be used in the field under the synthetic turf surface.   |
| <b>Select Fill</b>                                    | CL and/or SC<br>(7 ≤ PI ≤ 20) | Must be used to construct the fill body and all grade adjustments within the field areas.  |
| <b>On-Site Soils</b>                                  | SC, CL, and CH                | On-site soils may be suitable for use as fill within the project areas if they are free from organics, cohesive and have a Plasticity Index (PI) between 7 and 20. |
| <b>Flowable Fill</b> <sup>3</sup>                     | ---                           | Confined areas and backfill existing utility trenches.   |

1. Prior to any filling operations, samples of the proposed borrow and on-site materials should be obtained for laboratory moisture-density testing. The tests will provide a basis for evaluation of fill compaction by in-place density testing. A qualified soil technician should perform sufficient in-place density tests during the filling operations to evaluate that proper levels of compaction, including dry unit weight and moisture content, are being attained.
2. Crushed limestone and crushed concrete material should meet the requirements of 2014 TxDOT Item 247, Type A, or D, Grades 1-2 and/or 3 or turf manufacturer's specifications. The select fill materials should be free of organic material and debris and should not contain stones larger than 2 inches in the maximum dimension. The clayey gravel and caliche materials should meet the gradation requirements of Item 247, Type B, Grades 1-2 and/or 3 as specified in the 2014 TxDOT Standard Specifications Manual and a Plasticity Index between 7 and 20.
3. Excavatable flowable fill should have a 28-day strength between 80 and 200 psi and meet the requirements for 2014 TxDOT Item 401. Although usually costlier, flowable fill does not require placement in lifts or mechanical compaction.

## Fill Compaction Requirements

Structural and general fill should meet the following compaction requirements.

| Item   | Description   |
|--|---|
| <b>Fill Lift Thickness</b>                                     | The fill should be placed in loose lifts of about 8 inches, with compacted thickness not exceeding 6 inches.  |
| <b>Compaction Requirements (on-site soils and select fill)</b> | The on-site soils and select fill should be compacted to at least 95 percent of The Standard Effort (ASTM D698) maximum dry density within 2 percentage points of the optimum moisture content. |

## Wet Weather/Soft Subgrade Considerations

Construction operations may encounter difficulties due to the wet or soft surface soils becoming a general hindrance to equipment due to rutting and pumping of the soil surface, especially during and soon after periods of wet weather.



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If the subgrade cannot be adequately compacted to minimum densities as described above, one of the following measures will be required:

- Removal and replacement with select fill,
- Chemical treatment of the soil to dry and increase the stability of the subgrade, or
- Drying by natural means if the schedule allows.

In our experience with similar soils in this area, chemical treatment is the most efficient and effective method to increase the supporting value of wet and weak subgrade. Terracon should be contacted for additional recommendations if chemical treatment of the soils is needed.

Prior to placing any fill, all surface vegetation, topsoil, possible fill material and any otherwise unsuitable materials should be removed from the construction areas. Wet or dry material should either be removed, or moisture conditioned and recompacted. After stripping and grubbing, the subgrade should be proof-rolled where possible to aid in locating loose or soft areas. Proof-rolling can be performed with a 15-ton roller or fully loaded dump truck. Soft, dry and low-density soil should be removed or compacted in place prior to placing fill.

### Grading and Drainage

Positive drainage should be provided during construction and maintained throughout the life of the development. Infiltration of water into utility trenches excavations should be prevented during construction. Backfill in utility trenches, should be well compacted and free of all construction debris to reduce the possibility of moisture infiltration.

Consideration should be given to extending drainage piping to day light at the face of curbs then empty onto the appropriate drainage.

Utility trenches are a common source of water infiltration and migration. All utility trenches that penetrate beneath the field should be effectively sealed to restrict water intrusion and flow through the trenches that could migrate below the new surface.

We recommend constructing an effective clay "trench plug" that extends at least 5 feet out from the face of the field perimeter. The plug material should consist of clay compacted at a water content at or above the soils optimum water content. The clay fill should be placed to surround the utility line and be compacted in accordance with recommendations in this report. In addition, the turf manufacturer drainage installation within the field area should be followed.

## **Earthwork Construction Considerations**

Shallow excavations for the proposed construction are anticipated to be accomplished with conventional construction equipment. Upon completion of filling and grading, care should be taken to maintain the subgrade water content prior to construction. Construction traffic over the completed subgrade should be avoided. The site should also be graded to prevent ponding of surface water on the prepared subgrade or in excavations. Water collecting over or adjacent to construction areas should be removed. If the subgrade freezes, desiccates, saturates, or is disturbed, the affected material should be removed, or the materials should be scarified, moisture conditioned, and recompacted prior to artificial turf construction.

The groundwater table could affect overexcavation efforts, especially for over-excavation and replacement of lower strength soils. A temporary dewatering system consisting of sumps with pumps could be necessary to achieve the recommended depth of over-excavation.

As a minimum, excavations should be performed in accordance with OSHA 29 CFR, Part 1926, Subpart P, "Excavations" and its appendices, and in accordance with any applicable local, and/or state regulations.

Construction site safety is the sole responsibility of the contractor who controls the means, methods, and sequencing of construction operations. Under no circumstances shall the information provided herein be interpreted to mean Terracon is assuming responsibility for construction site safety, or the contractor's activities; such responsibility shall neither be implied nor inferred.

## **Construction Observation and Testing**

The earthwork efforts should be monitored under the direction of the Geotechnical Engineer. Monitoring should include documentation of adequate removal of vegetation and topsoil, proofrolling, and mitigation of areas delineated by the proofroll to require mitigation.

Each lift of compacted fill should be tested, evaluated, and reworked, as necessary, until approved by the Geotechnical Engineer prior to placement of additional lifts. Each lift of fill should be tested for density and water content at a frequency of at least one test for every 2,500 square feet of compacted fill in the field areas. One density and water content test should be performed for every 50 linear feet of compacted utility trench backfill.

In areas of foundation excavations, the bearing subgrade should be evaluated under the direction of the Geotechnical Engineer. If unanticipated conditions are encountered, the Geotechnical Engineer should prescribe mitigation options.

The essential parameters necessary for construction, the continuation of the Geotechnical Engineer into the construction phase of the project provides the continuity to maintain the Geotechnical Engineer's evaluation of subsurface conditions, including assessing variations and associated design changes.

## **TURF**

The synthetic field surfaces (turf) are constructed of an all-weather surface supported by a granular section, which consists of synthetic turf, aggregate base, aggregate subbase, geotextile membrane, a properly moisture conditioned and compacted subgrade and a drainage system. The artificial turfs, especially those supported by expansive clay soils may be subject to movement and cracking, thus requiring periodic maintenance.

### **General Turf Comments**

A critical aspect of turf performance is site preparation. Synthetic field surface recommendations, noted in this section, must be applied to the site, which has been prepared as recommended in the **Site Preparation** section.

We recommend the moisture content and density of the top 6 inches of the subgrade be evaluated and the subgrade be proofrolled within two days prior to commencement of actual aggregate subbase placement operations. Areas not in compliance with the required ranges of moisture or density should be moisture conditioned and re-compacted.

Particular attention should be paid to high traffic areas that were rutted and disturbed earlier and to areas where backfilled trenches are located. Areas where unsuitable conditions are located should be repaired by removing and replacing the materials with properly compacted fills.

If a significant precipitation event occurs after the evaluation or if the surface becomes disturbed, the subgrade should be reviewed by qualified personnel immediately prior to construction. The subgrade should be in its finished form at the time of the final review.

Based on the subsurface conditions, we anticipate that the subgrade will generally consist of the on-site soils. The top 6 inches of the finished subgrade soils directly beneath the aggregate subbase may be chemically treated. Chemical treatment will increase the supporting value of the subgrade and decrease the effect of moisture on subgrade soils.

The proposed Synthetic Turf may consist of the following thickness section.

| Component   | Thickness                         |
|---|-----------------------------------|
| Turf Surface  | As determined by the manufacturer |
| Finishing Top Stone (Aggregate Base)                  |                                   |
| Aggregate Subbase                                     |                                   |
| Geotextile Membrane                                   |                                   |
| Moisture Conditioned or Treated Subgrade <sup>1</sup> | Minimum 6 inches                  |

1. Prepared subgrade as recommended in the **Earthwork** and **Turf** sections of this report

Proper perimeter drainage is very important and should be provided so infiltration of surface water from surrounding areas is minimized.

We recommend constructing a concrete curb/wall around the perimeter of the field. The structure will help to isolate the near surface soils beneath the turf section from moisture variations. The curbs should extend through the base at least 24 inches below the aggregate base material. The inside face of each curb should be lined with a 20-mil polypropylene membrane. This will help reduce migration of subsurface water into the aggregate base course from adjacent areas. A crack sealant compatible to both asphalt and concrete should be provided at all concrete-asphalt interfaces.

**Section Materials**

Aggregate Base and Subbase Material: Crushed limestone and crushed concrete material should meet the requirements of 2014 TxDOT Item 247, Type A, or D, Grades 1-2 and/or 3 or turf manufacturer’s specifications.

As an alternate to the Type A base, treated “caliche” material meeting the requirements of 2014 TxDOT Standard Specification Manual Item 247, Type B, Grade 1-2 and/or 3 may be used.

The granular base should be compacted to at least 95 percent of the maximum dry density determined in accordance with the modified moisture-density relationship (ASTM D 1557) at moisture content within 2 percentage points of the optimum moisture content.

Treated Subgrade: The subgrade soils should be treated with lime (modifier) in accordance with 2014 TxDOT Standard Specifications Item 260. The recommended percentage of modifier is for estimating and planning. The actual quantity of modifier required should be determined at the time of construction by laboratory tests on bulk samples of the subgrade soils.

We anticipate that the on-site surficial soils be treated with about 3 percent of modifier. This percentage is given as application by dry weight and is typically equivalent to about 15 pounds of modifier per square yard per 6-inch depth. The subgrade should be compacted to a minimum of 95 percent of the Standard Effort (ASTM D 698) maximum dry density within 2 percentage points of the optimum moisture content. Preferably, traffic, should be kept off the treated subgrade for about 3 to 5 days to facilitate curing of the soil - chemical mixture; in addition, the subgrade is not suitable for heavy construction traffic prior to paving.

Post-construction subgrade movements and some cracking of the pavements are not uncommon for subgrade conditions such as those observed at this site. Although chemical treatment of the subgrade will help to reduce such movement/cracking, this movement/cracking cannot be economically eliminated.

Moisture Conditioned Subgrade: The subgrade should be scarified to a depth of 6 inches and moisture conditioned within 2 percentage points of the optimum moisture content. The subgrade should then be compacted to at least 95 percent of the maximum dry density determined in accordance with ASTM D 698. This should result in a compacted, moisture conditioned layer about 8 inches thick.

Turf Surface, Finishing Top Stone, Aggregate Subbase and Geotextile: These materials should be in accordance with the criteria provided by the manufacturer.

## **Construction Design Considerations**

Turf performance is affected by its surroundings. In addition to providing preventive maintenance, the civil engineer should consider the following recommendations in the design:

- The subgrade and the turf surface should be sloped to promote proper surface drainage;
- Install drainage system surrounding areas anticipated for frequent wetting;
- Place curb, gutter and/or sidewalk directly on low permeability subgrade soils rather than on unbound granular base course materials.

## **Field Drainage**

Turf surface should be sloped to provide rapid drainage of surface water. Water allowed to pond on or adjacent to the field could saturate the subgrade and contribute to premature turf deterioration. In addition, the subgrade should be graded to provide positive drainage within the granular base section. Appropriate sub-drainage or connection to a suitable daylight outlet should be provided to remove water from the granular subbase.

## **Field Maintenance**

The turf sections provided in this report represent minimum recommended thicknesses and, as such, periodic maintenance should be anticipated. Therefore, preventive maintenance should be planned and provided for through an on-going turf management program.

Maintenance activities are intended to slow the rate of turf deterioration and to preserve the investment. Maintenance consists of both localized maintenance (e.g. crack and joint sealing and patching) and global maintenance (e.g. surface sealing). Preventive maintenance is usually the priority when implementing a turf maintenance program. Additional engineering observation is recommended to determine the type and extent of a cost-effective program. Even with periodic maintenance, some movements and related cracking may still occur, and repairs may be required.

## **GENERAL COMMENTS**

Our analysis and opinions are based upon our understanding of the project, the geotechnical conditions in the area, and the data obtained from our site exploration. Natural variations will occur between exploration point locations or due to the modifying effects of construction or weather. The nature and extent of such variations may not become evident until during or after construction. Terracon should be retained as the Geotechnical Engineer, where noted in this report, to provide observation and testing services during pertinent construction phases. If variations appear, we can provide further evaluation and supplemental recommendations. If variations are noted in the absence of our observation and testing services on-site, we should be immediately notified so that we can provide evaluation and supplemental recommendations.

Our Scope of Services does not include either specifically or by implication any environmental or biological (e.g., mold, fungi, bacteria) assessment of the site or identification or prevention of pollutants, hazardous materials or conditions. If the owner is concerned about the potential for such contamination or pollution, other studies should be undertaken.

Our services and any correspondence or collaboration through this system are intended for the sole benefit and exclusive use of our client for specific application to the project discussed and are accomplished in accordance with generally accepted geotechnical engineering practices with no third-party beneficiaries intended. Any third-party access to services or correspondence is solely for information purposes to support the services provided by Terracon to our client. Reliance upon the services and any work product is limited to our client, and is not intended for third parties. Any use or reliance of the provided information by third parties is done solely at their own risk. No warranties, either express or implied, are intended or made.

Site characteristics as provided are for design purposes and not to estimate excavation cost. Any use of our report in that regard is done at the sole risk of the excavating cost estimator as there



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may be variations on the site that are not apparent in the data that could significantly impact excavation cost. Any parties charged with estimating excavation costs should seek their own site characterization for specific purposes to obtain the specific level of detail necessary for costing. Site safety, and cost estimating including, excavation support, and dewatering requirements/design are the responsibility of others. If changes in the nature, design, or location of the project are planned, our conclusions and recommendations shall not be considered valid unless we review the changes and either verify or modify our conclusions in writing.

## ATTACHMENTS

## EXPLORATION AND TESTING PROCEDURES

### Field Exploration

| Number of Borings | Boring Depth (feet) <sup>1</sup> | Location                     |
|-------------------|----------------------------------|------------------------------|
| 7                 | 10                               | Softball and Baseball Fields |

1. Below ground surface

**Boring Layout and Elevations:** Terracon personnel provided the boring layout. Coordinates were obtained with a handheld GPS unit (estimated horizontal accuracy of about ±10 feet).

**Subsurface Exploration Procedures:** We advanced the soil borings with a truck-mounted drill rig using continuous flight augers (solid stem and/or hollow stem as necessary depending on soil conditions). Three samples were obtained in the upper 5 feet of the borings. Soil sampling was performed using thin-wall tube and/or split-barrel sampling procedures. We observed and recorded groundwater levels during drilling and sampling. For safety purposes, the borings were backfilled with auger cuttings after their completion.

The sampling depths, penetration distances, and other sampling information were recorded on the field boring logs. The samples were placed in appropriate containers and taken to our soil laboratory for testing and classification by a geotechnical engineer. Our exploration team prepared field boring logs as part of the drilling operations. The field logs included visual classifications of the materials encountered during drilling and our interpretation of the subsurface conditions between samples. Final boring logs were prepared from the field log. The final boring logs represent the geotechnical engineer's interpretation of the field logs and include modifications based on observations and tests of the samples in our laboratory.

### Laboratory Testing

The project engineer reviewed the field data and assigned various laboratory tests to better understand the engineering properties of the various soil strata as necessary for this project.

- ASTM D2216 Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass
- ASTM D4318 Standard Test Methods for Liquid Limit, Plastic Limit, and Plasticity Index of Soils
- ASTM D422 Standard Test Method for Particle-Size Analysis of Soils

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The laboratory testing program often included examination of soil samples by an engineer. Based on the material's texture and plasticity, we described and classified the soil samples in accordance with the Unified Soil Classification System (USCS).

## **SITE LOCATION AND EXPLORATION PLANS**

### **Contents:**

Site Location Plan

Exploration Plan

**SITE LOCATION**

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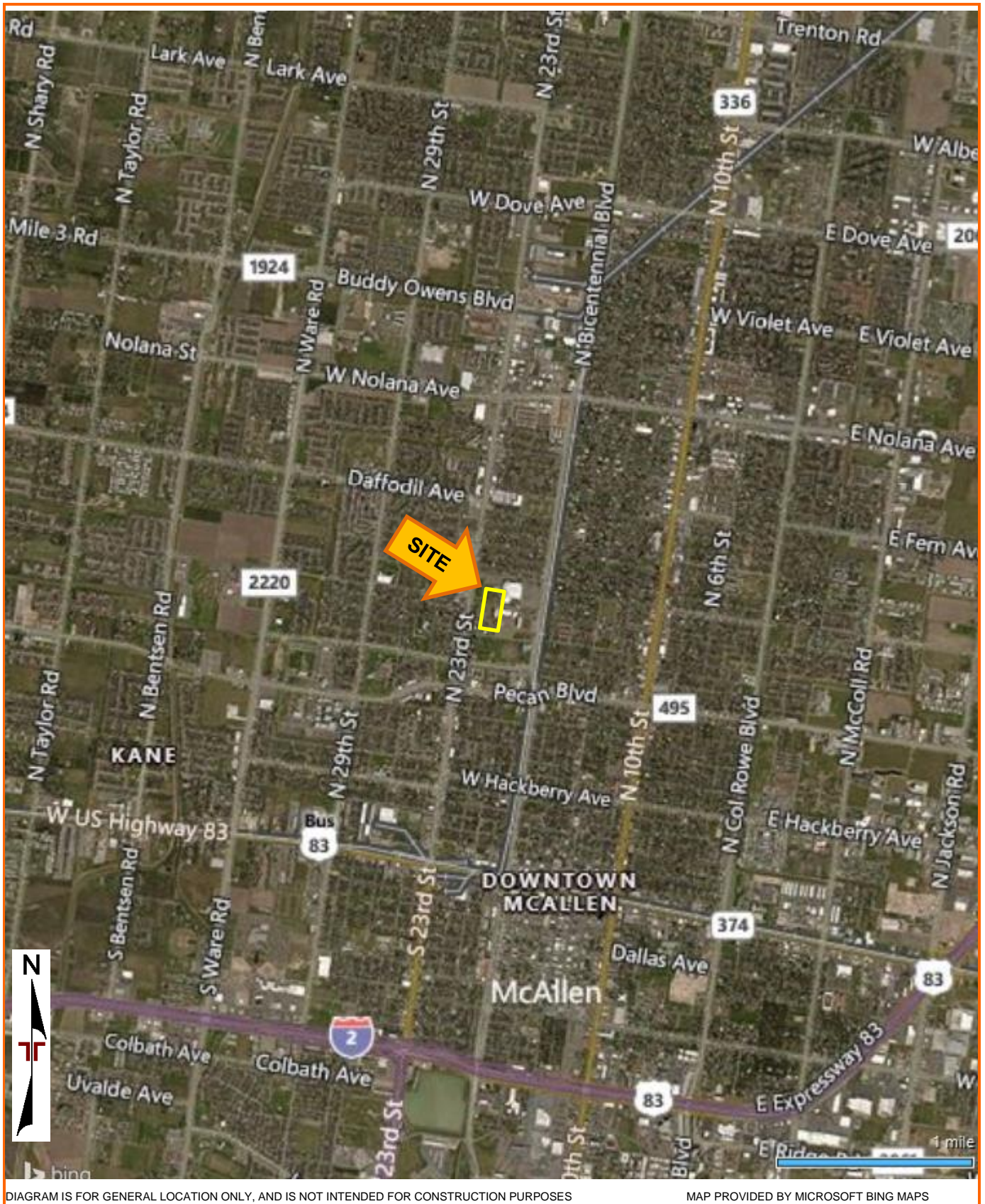


DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

MAP PROVIDED BY MICROSOFT BING MAPS



**EXPLORATION PLAN**

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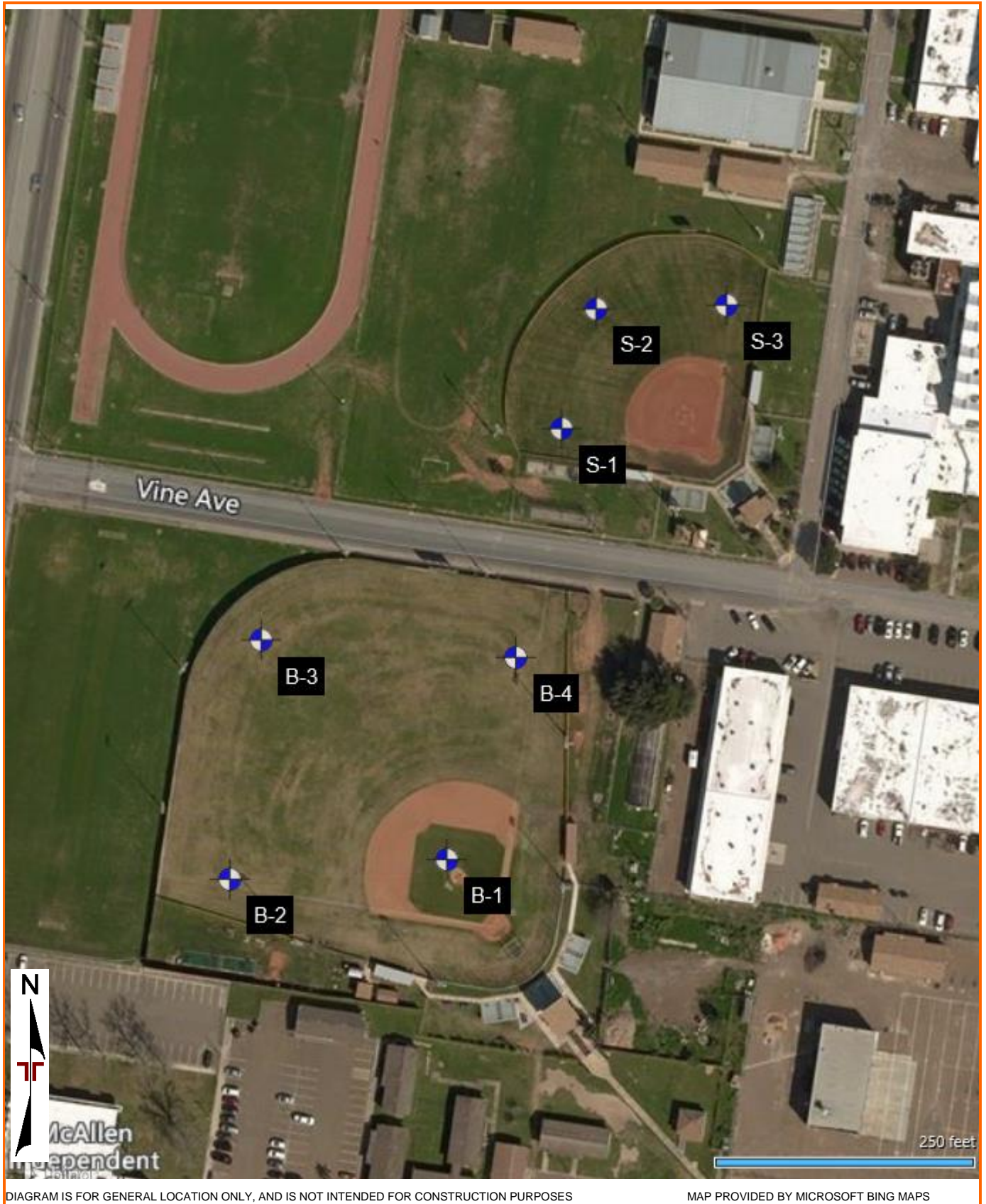


DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

MAP PROVIDED BY MICROSOFT BING MAPS

## EXPLORATION RESULTS

**Contents:**  
Boring Logs  
GeoModel

# BORING LOG NO. B-1

**PROJECT:** McHi Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2021 La Vista Ave  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a>   | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS | PERCENT FINES |
|-------------|-------------|---|-------------|--------------------------|-------------|--------------------|-------------------|------------------|---------------|
|             |             | DEPTH   |             |                          |             |                    |                   | LL-PL-PI         |               |
| 1           |             | <b>CLAYEY SAND (SC)</b> , dark brown, medium dense<br>Latitude: 26.2245° Longitude: -98.2406° |             |                          | X           | 9-12-12<br>N=24    | 4.8               | 25-18-7          |               |
|             |             |   |             |                          | X           | 6-6-5<br>N=11      | 12.2              |                  | 45            |
|             |             |   | 5           |                          | X           | 2-2-2<br>N=4       | 18.3              |                  |               |
| 2           |             | <b>LEAN CLAY (CL)</b> , with sand, brown, medium stiff to stiff                               |             |                          | X           | 2-2-2<br>N=4       | 20.3              | 34-16-18         |               |
|             |             |   |             |                          | X           | 2-3-9<br>N=12      | 23.1              |                  | 72            |
|             |             | <b>Boring Terminated at 10 Feet</b>   | 10          |                          |             |                    |                   |                  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered



Boring Started: 10-26-2021

Boring Completed: 10-26-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215141

Cave-in

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215141 MCHI-BASEBALL & S.GPJ TERRACON\_DATATEMPLATE.GDT 11/4/21

# BORING LOG NO. B-2

**PROJECT:** McHi Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2021 La Vista Ave  
McAllen, TX

| MODEL LAYER                         | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2244° Longitude: -98.2413° | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS |  | PERCENT FINES |
|-------------------------------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|------------------|--|---------------|
|                                     |             |  |             |                          |             |                    |                   | LL-PL-PI         |  |               |
|                                     |             | DEPTH  |             |                          |             |                    |                   |                  |  |               |
| 2                                   |             | <b>LEAN CLAY (CL)</b> , with sand, dark brown to brown, stiff to very stiff              |             |                          | X           | 5-7-4<br>N=11      | 11.3              | 34-12-22         |  |               |
|                                     |             | - soft at 2½ feet  |             |                          | X           | 2-2-1<br>N=3       | 15.3              |                  |  |               |
|                                     |             |  | 5           |                          | X           | 2-2-2<br>N=4       | 18.2              | 35-14-21         |  |               |
|                                     |             |  |             |                          | X           | 3-6-11<br>N=17     | 20.0              |                  |  | 71            |
|                                     |             | - hard at 8½ feet  |             |                          | X           | 12-22-35<br>N=57   | 17.7              |                  |  |               |
|                                     |             | 10.0   | 10          |                          |             |                    |                   |                  |  |               |
| <b>Boring Terminated at 10 Feet</b> |             |  |             |                          |             |                    |                   |                  |  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered



Boring Started: 10-26-2021

Boring Completed: 10-26-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215141

Cave-in

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215141.MCHI.BASEBALL & S.GPJ TERRACON\_DATATEMPLATE.GDT 11/4/21

# BORING LOG NO. B-3

**PROJECT:** McHi Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2021 La Vista Ave  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a>   | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS | PERCENT FINES |
|-------------|-------------|---|-------------|--------------------------|-------------|--------------------|-------------------|------------------|---------------|
|             |             | DEPTH   |             |                          |             |                    |                   | LL-PL-PI         |               |
|             |             | <p><b>CLAYEY SAND (SC)</b>, dark brown to brown, loose to medium dense</p> <p>- very loose at 4½ feet</p> | 5           |                          | X           | 8-9-9<br>N=18      | 9.4               | 33-14-19         |               |
|             |             |   |             |                          | X           | 6-3-3<br>N=6       | 11.3              |                  | 39            |
|             |             |   |             |                          | X           | 2-1-2<br>N=3       | 18.4              | 33-14-19         |               |
|             |             |   |             |                          | X           | 2-2-3<br>N=5       | 21.2              |                  |               |
|             |             |   |             |                          | X           | 5-9-15<br>N=24     | 20.3              |                  |               |
|             |             | 10.0  |             |                          |             |                    |                   |                  |               |
|             |             | <b>Boring Terminated at 10 Feet</b>   |             |                          |             |                    |                   |                  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered

Cave-in



Boring Started: 10-26-2021

Boring Completed: 10-26-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215141

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215141 MCHI BASEBALL & S.GPJ TERRACON\_DATATEMPLATE.GDT 11/4/21

# BORING LOG NO. B-4

**PROJECT:** McHi Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2021 La Vista Ave  
McAllen, TX

| MODEL LAYER                         | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2250° Longitude: -98.2404° | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS |  | PERCENT FINES |
|-------------------------------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|------------------|--|---------------|
|                                     |             |  |             |                          |             |                    |                   | LL-PL-PI         |  |               |
|                                     | 2           | <b>SANDY LEAN CLAY (CL)</b> , dark brown to brown, stiff to very stiff                   |             |                          | X           | 6-7-6<br>N=13      | 6.5               | 29-13-16         |  |               |
|                                     |             |  |             |                          | X           | 2-2-3<br>N=5       | 17.4              |                  |  | 50            |
|                                     |             |  | 5           |                          | X           | 2-3-3<br>N=6       | 15.2              | 32-15-17         |  |               |
|                                     |             |  |             |                          | X           | 2-4-5<br>N=9       | 22.3              |                  |  |               |
|                                     |             | - very stiff fat clay (CH), tanish-brown at 8½ feet                                      |             |                          | X           | 4-7-9<br>N=16      | 19.3              | 50-18-32         |  |               |
|                                     |             | 10.0   | 10          |                          |             |                    |                   |                  |  |               |
| <b>Boring Terminated at 10 Feet</b> |             |  |             |                          |             |                    |                   |                  |  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered

Boring Started: 10-26-2021

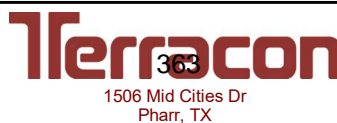
Boring Completed: 10-26-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215141

Cave-in



THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215141.MCHI.BASEBALL & S.GPJ TERRACON\_DATATEMPLATE.GDT 11/4/21



# BORING LOG NO. S-1

**PROJECT:** McHi Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2021 La Vista Ave  
McAllen, TX

| MODEL LAYER                         | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a>  | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS | PERCENT FINES |
|-------------------------------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|------------------|---------------|
|                                     |             | DEPTH  |             |                          |             |                    |                   | LL-PL-PI         |               |
|                                     | 2           | <p><b>SANDY LEAN CLAY (CL)</b>, dark brown to tannish-brown, medium stiff to stiff</p> <p style="text-align: center;">- with sand at 6½ feet</p> | 5           |                          | X           | 3-3-4<br>N=7       | 10.5              | 34-16-18         |               |
|                                     |             |  |             |                          | X           | 3-3-3<br>N=6       | 12.5              |                  | 63            |
|                                     |             |  |             |                          | X           | 2-4-6<br>N=10      | 20.8              | 47-17-30         |               |
|                                     |             |  |             |                          | X           | 3-6-8<br>N=14      | 32.6              |                  | 76            |
|                                     |             |  |             |                          | X           | 3-6-7<br>N=13      | 17.8              |                  |               |
|                                     |             | 10.0   |             |                          |             |                    |                   |                  |               |
| <b>Boring Terminated at 10 Feet</b> |             |  |             |                          |             |                    |                   |                  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered



Boring Started: 10-26-2021

Boring Completed: 10-26-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215141

Cave-in

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215141 MCHI BASEBALL & S.GPJ TERRACON\_DATATEMPLATE.GDT 11/4/21

# BORING LOG NO. S-2

**PROJECT:** McHi Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2021 La Vista Ave  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a>                                    | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|------------------|---------------|
|             |             | DEPTH  |             |                          |             |                    |                   | LL-PL-PI         |               |
|             |             | Latitude: 26.2259° Longitude: -98.2402°  |             |                          |             |                    |                   |                  |               |
|             |             | <b>SANDY LEAN CLAY (CL)</b> , dark brown to tannish-brown, medium stiff to stiff | 5           |                          | X           | 4-6-4<br>N=10      | 8.1               | 33-14-19         |               |
|             |             |  |             |                          | X           | 3-3-3<br>N=6       | 16.5              |                  | 57            |
|             |             |  |             |                          | X           | 2-2-4<br>N=6       | 20.2              |                  |               |
|             |             |  |             |                          | X           | 3-5-7<br>N=12      | 18.1              | 51-17-34         |               |
|             |             |  |             |                          | X           | 3-5-8<br>N=13      | 18.4              |                  | 82            |
|             |             |  | 10          |                          |             |                    |                   |                  |               |
|             |             | <b>Boring Terminated at 10 Feet</b>  |             |                          |             |                    |                   |                  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered

Cave-in



Boring Started: 10-26-2021

Boring Completed: 10-26-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215141

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215141 MCHI BASEBALL & S.GPJ TERRACON\_DATATEMPLATE.GDT 11/4/21

# BORING LOG NO. S-3

**PROJECT:** McHi Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2021 La Vista Ave  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a>  | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|------------------|---------------|
|             |             | DEPTH  |             |                          |             |                    |                   | LL-PL-PI         |               |
|             | 2           | <p><b>SANDY LEAN CLAY (CL)</b>, dark brown to tannish-brown, medium stiff to stiff</p> <p style="text-align: center;">- very stiff, with sand at 8½ feet</p> | 5           |                          | X           | 4-4-4<br>N=8       | 8.4               | 32-15-17         |               |
|             |             |  |             |                          | X           | 3-2-3<br>N=5       | 13.7              |                  | 43            |
|             |             |  |             |                          | X           | 2-3-3<br>N=6       | 17.7              |                  |               |
|             |             |  |             |                          | X           | 3-4-7<br>N=11      | 21.4              | 40-17-23         |               |
|             |             |  |             |                          | X           | 5-6-9<br>N=15      | 20.4              |                  | 85            |
|             |             | 10.0   |             |                          |             |                    |                   |                  |               |
|             |             | <b>Boring Terminated at 10 Feet</b>  |             |                          |             |                    |                   |                  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered



Boring Started: 10-26-2021

Boring Completed: 10-26-2021

Drill Rig: CME 55

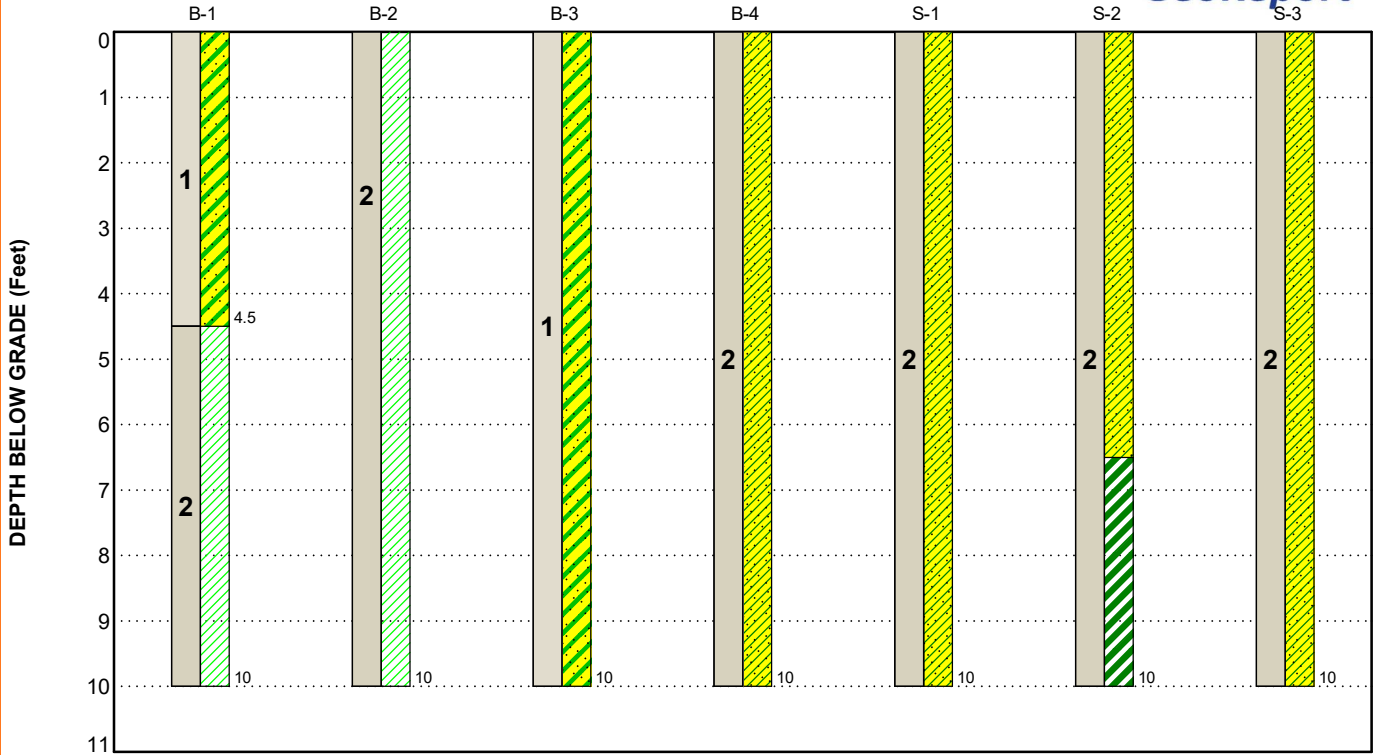
Driller: SWD

Project No.: 88215141

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215141.MCHI.BASEBALL & S.GPJ TERRACON\_DATATEMPLATE.GDT 11/4/21

**GEOMODEL**

McHi Baseball & Softball Fields Artificial Turf ■ McAllen, TX  
 Terracon Project No. 88215141



This is not a cross section. This is intended to display the Geotechnical Model only. See individual logs for more detailed conditions.

| Model Layer | Layer Name | General Description   |
|-------------|------------|---|
| 1           | SAND       | Clayey Sand (SC)<br>Very loose to medium dense  |
| 2           | CLAY       | Lean clay with sand and Sandy lean clay (CL), and Fat clay with sand (CH)<br>soft stiff to hard |

**LEGEND**

- Clayey Sand
- Lean Clay
- Sandy Lean Clay
- Fat Clay

NOTES:  
 Layering shown on this figure has been developed by the geotechnical engineer for purposes of modeling the subsurface conditions as required for the subsequent geotechnical engineering for this project. Numbers adjacent to soil column indicate depth below ground surface.

## **SUPPORTING INFORMATION**






### **Contents:**

General Notes

Unified Soil Classification System

## GENERAL NOTES

### DESCRIPTION OF SYMBOLS AND ABBREVIATIONS

| SAMPLING   | WATER LEVEL  | FIELD TESTS   |
|--|--|---|
|  Shelby Tube<br> Split Spoon |  Water Initially Encountered<br> Water Level After a Specified Period of Time<br> Water Level After a Specified Period of Time<br><br>Water levels indicated on the soil boring logs are the levels measured in the borehole at the times indicated. Groundwater level variations will occur over time. In low permeability soils, accurate determination of groundwater levels is not possible with short term water level observations. | (N) Standard Penetration Test Resistance (Blows/Ft.)<br>(HP) Hand Penetrometer<br>(T) Torvane<br>(DCP) Dynamic Cone Penetrometer<br>(UC) Unconfined Compressive Strength<br>(PID) Photo-Ionization Detector<br>(OVA) Organic Vapor Analyzer |

### DESCRIPTIVE SOIL CLASSIFICATION

Soil classification is based on the Unified Soil Classification System. Coarse Grained Soils have more than 50% of their dry weight retained on a #200 sieve; their principal descriptors are: boulders, cobbles, gravel or sand. Fine Grained Soils have less than 50% of their dry weight retained on a #200 sieve; they are principally described as clays if they are plastic, and silts if they are slightly plastic or non-plastic. Major constituents may be added as modifiers and minor constituents may be added according to the relative proportions based on grain size. In addition to gradation, coarse-grained soils are defined on the basis of their in-place relative density and fine-grained soils on the basis of their consistency.

### LOCATION AND ELEVATION NOTES

Unless otherwise noted, Latitude and Longitude are approximately determined using a hand-held GPS device. The accuracy of such devices is variable. Surface elevation data annotated with +/- indicates that no actual topographical survey was conducted to confirm the surface elevation. Instead, the surface elevation was approximately determined from topographic maps of the area.

### STRENGTH TERMS

| RELATIVE DENSITY OF COARSE-GRAINED SOILS<br>(More than 50% retained on No. 200 sieve.)<br>Density determined by Standard Penetration Resistance |   | CONSISTENCY OF FINE-GRAINED SOILS<br>(50% or more passing the No. 200 sieve.)<br>Consistency determined by laboratory shear strength testing, field visual-manual procedures or standard penetration resistance |   |   |
|---|---|---|---|---|
| Descriptive Term (Density)  | Standard Penetration or N-Value Blows/Ft. | Descriptive Term (Consistency)  | Unconfined Compressive Strength Qu, (tsf) | Standard Penetration or N-Value Blows/Ft. |
| Very Loose  | 0 - 3                                     | Very Soft   | less than 0.25                            | 0 - 1                                     |
| Loose   | 4 - 9                                     | Soft  | 0.25 to 0.50                              | 2 - 4                                     |
| Medium Dense  | 10 - 29                                   | Medium Stiff  | 0.50 to 1.00                              | 4 - 8                                     |
| Dense   | 30 - 50                                   | Stiff   | 1.00 to 2.00                              | 8 - 15                                    |
| Very Dense  | > 50                                      | Very Stiff  | 2.00 to 4.00                              | 15 - 30                                   |
|   |   | Hard  | > 4.00                                    | > 30                                      |

| RELATIVE PROPORTIONS OF SAND AND GRAVEL   |                                      | RELATIVE PROPORTIONS OF FINES             |                       |
|---|--------------------------------------|---|-----------------------|
| Descriptive Term(s) of other constituents | Percent of Dry Weight                | Descriptive Term(s) of other constituents | Percent of Dry Weight |
| Trace                                     | <15                                  | Trace                                     | <5                    |
| With                                      | 15-29                                | With                                      | 5-12                  |
| Modifier                                  | >30                                  | Modifier                                  | >12                   |
| GRAIN SIZE TERMINOLOGY                    |                                      | PLASTICITY DESCRIPTION                    |                       |
| Major Component of Sample                 | Particle Size                        | Term                                      | Plasticity Index      |
| Boulders                                  | Over 12 in. (300 mm)                 | Non-plastic                               | 0                     |
| Cobbles                                   | 12 in. to 3 in. (300mm to 75mm)      | Low                                       | 1 - 10                |
| Gravel                                    | 3 in. to #4 sieve (75mm to 4.75 mm)  | Medium                                    | 11 - 30               |
| Sand                                      | #4 to #200 sieve (4.75mm to 0.075mm) | High                                      | > 30                  |
| Silt or Clay                              | Passing #200 sieve (0.075mm)         |   |                       |



| Criteria for Assigning Group Symbols and Group Names Using Laboratory Tests <sup>A</sup> |   |  |   | Soil Classification |                                   |                                    |
|--|---|--|---|---------------------|-----------------------------------|------------------------------------|
|  |   |  |   | Group Symbol        | Group Name <sup>B</sup>           |                                    |
| <b>Coarse-Grained Soils:</b><br>More than 50% retained on No. 200 sieve                  | <b>Gravels:</b><br>More than 50% of coarse fraction retained on No. 4 sieve | <b>Clean Gravels:</b><br>Less than 5% fines <sup>C</sup>       | $Cu \geq 4$ and $1 \leq Cc \leq 3$ <sup>E</sup>       | GW                  | Well-graded gravel <sup>F</sup>   |                                    |
|  |   |  | $Cu < 4$ and/or $[Cc < 1$ or $Cc > 3.0]$ <sup>E</sup> | GP                  | Poorly graded gravel <sup>F</sup> |                                    |
|  |   | <b>Gravels with Fines:</b><br>More than 12% fines <sup>C</sup> | Fines classify as ML or MH                            | GM                  | Silty gravel <sup>F, G, H</sup>   |                                    |
|  |   |  | Fines classify as CL or CH                            | GC                  | Clayey gravel <sup>F, G, H</sup>  |                                    |
|  | <b>Sands:</b><br>50% or more of coarse fraction passes No. 4 sieve          | <b>Clean Sands:</b><br>Less than 5% fines <sup>D</sup>         | $Cu \geq 6$ and $1 \leq Cc \leq 3$ <sup>E</sup>       | SW                  | Well-graded sand <sup>I</sup>     |                                    |
|  |   |  | $Cu < 6$ and/or $[Cc < 1$ or $Cc > 3.0]$ <sup>E</sup> | SP                  | Poorly graded sand <sup>I</sup>   |                                    |
|  |   | <b>Sands with Fines:</b><br>More than 12% fines <sup>D</sup>   | Fines classify as ML or MH                            | SM                  | Silty sand <sup>G, H, I</sup>     |                                    |
|  |   |  | Fines classify as CL or CH                            | SC                  | Clayey sand <sup>G, H, I</sup>    |                                    |
| <b>Fine-Grained Soils:</b><br>50% or more passes the No. 200 sieve                       | <b>Silts and Clays:</b><br>Liquid limit less than 50                        | <b>Inorganic:</b>  | $PI > 7$ and plots on or above "A" line               | CL                  | Lean clay <sup>K, L, M</sup>      |                                    |
|  |   |  | $PI < 4$ or plots below "A" line <sup>J</sup>         | ML                  | Silt <sup>K, L, M</sup>           |                                    |
|  |   | <b>Organic:</b>  | Liquid limit - oven dried                             | < 0.75              | OL                                | Organic clay <sup>K, L, M, N</sup> |
|  |   |  | Liquid limit - not dried                              |                     |                                   | Organic silt <sup>K, L, M, O</sup> |
|  | <b>Silts and Clays:</b><br>Liquid limit 50 or more                          | <b>Inorganic:</b>  | $PI$ plots on or above "A" line                       | CH                  | Fat clay <sup>K, L, M</sup>       |                                    |
|  |   |  | $PI$ plots below "A" line                             | MH                  | Elastic Silt <sup>K, L, M</sup>   |                                    |
|  |   | <b>Organic:</b>  | Liquid limit - oven dried                             | < 0.75              | OH                                | Organic clay <sup>K, L, M, P</sup> |
|  |   |  | Liquid limit - not dried                              |                     |                                   | Organic silt <sup>K, L, M, Q</sup> |
|  | <b>Highly organic soils:</b>  | Primarily organic matter, dark in color, and organic odor      |   |                     | PT                                | Peat                               |

<sup>A</sup> Based on the material passing the 3-inch (75-mm) sieve.

<sup>B</sup> If field sample contained cobbles or boulders, or both, add "with cobbles or boulders, or both" to group name.

<sup>C</sup> Gravels with 5 to 12% fines require dual symbols: GW-GM well-graded gravel with silt, GW-GC well-graded gravel with clay, GP-GM poorly graded gravel with silt, GP-GC poorly graded gravel with clay.

<sup>D</sup> Sands with 5 to 12% fines require dual symbols: SW-SM well-graded sand with silt, SW-SC well-graded sand with clay, SP-SM poorly graded sand with silt, SP-SC poorly graded sand with clay.

<sup>E</sup>  $Cu = D_{60}/D_{10}$      $Cc = \frac{(D_{30})^2}{D_{10} \times D_{60}}$

<sup>F</sup> If soil contains  $\geq 15\%$  sand, add "with sand" to group name.

<sup>G</sup> If fines classify as CL-ML, use dual symbol GC-GM, or SC-SM.

<sup>H</sup> If fines are organic, add "with organic fines" to group name.

<sup>I</sup> If soil contains  $\geq 15\%$  gravel, add "with gravel" to group name.

<sup>J</sup> If Atterberg limits plot in shaded area, soil is a CL-ML, silty clay.

<sup>K</sup> If soil contains 15 to 29% plus No. 200, add "with sand" or "with gravel," whichever is predominant.

<sup>L</sup> If soil contains  $\geq 30\%$  plus No. 200 predominantly sand, add "sandy" to group name.

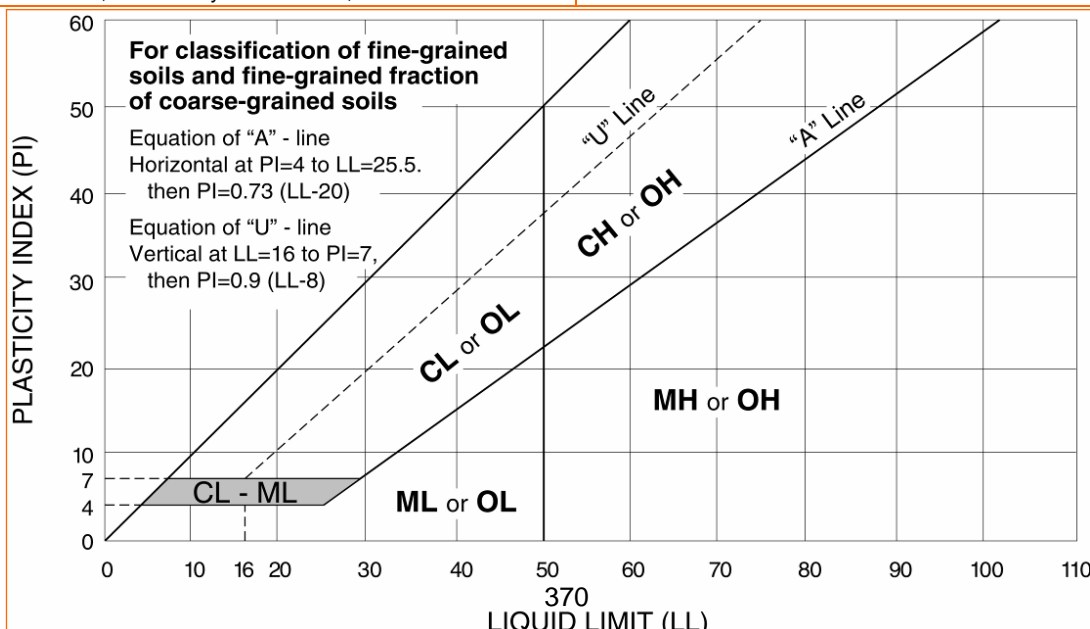
<sup>M</sup> If soil contains  $\geq 30\%$  plus No. 200, predominantly gravel, add "gravelly" to group name.

<sup>N</sup>  $PI \geq 4$  and plots on or above "A" line.

<sup>O</sup>  $PI < 4$  or plots below "A" line.

<sup>P</sup>  $PI$  plots on or above "A" line.

<sup>Q</sup>  $PI$  plots below "A" line.





# Geotechnical Engineering Report

**Memorial High School Softball & Baseball Fields Artificial Turf**

**McAllen, Texas**

November 8, 2021

Terracon Project No. 88215142

**Prepared for:**

McAllen Independent School District

McAllen, Texas

**Prepared by:**

Terracon Consultants, Inc.

Pharr, Texas



November 8, 2021



McAllen Independent School District  
4309 Warrior Dr  
McAllen, Texas 78501-3396

Attn: Ms. Melissa Ortiz  
P: (956) 632-3200  
E: melissa.ortiz@mcallenisd.net

Re: Geotechnical Engineering Report  
Memorial High School Softball & Baseball Fields Artificial Turf  
101 E Hackberry Ave.  
McAllen, Texas 78501  
Terracon Project No. 88215142

Dear Mr. Ortiz,

We have completed the Geotechnical Engineering services for the above referenced project. This study was performed in general accordance with Terracon Proposal No. P88215117 dated August 9, 2021. This report presents the findings of the subsurface exploration and provides geotechnical recommendations concerning earthwork for the proposed project.

We appreciate the opportunity to be of service to you on this project. If you have any questions concerning this report or if we may be of further service, please contact us.

Sincerely,  
**Terracon Consultants, Inc.**  
(Texas Firm Registration No.: F-3272)

S. Mustapha Rahmaninezhad, Ph.D.  
Senior Engineer



11/8/21

Alfonso A. Soto, P.E., D.GE  
Principal

## REPORT TOPICS

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**Note:** This report was originally delivered in a web-based format. **Orange Bold** text in the report indicates a referenced section heading. The PDF version also includes hyperlinks which direct the reader to that section and clicking on the **GeoReport** logo will bring you back to this page. For more interactive features, please view your project online at [client.terracon.com](http://client.terracon.com).

## ATTACHMENTS

**EXPLORATION AND TESTING PROCEDURES**  
**SITE LOCATION AND EXPLORATION PLANS**  
**EXPLORATION RESULTS**  
**SUPPORTING INFORMATION**

**Note:** Refer to each individual Attachment for a listing of contents.

**Geotechnical Engineering Report**  
**Memorial High School Softball & Baseball Fields Artificial Turf**  
**101 E Hackberry Ave.**  
**McAllen, Texas**  
**Terracon Project No. 88215142**  
**November 8, 2021**

**INTRODUCTION**

This report presents the results of our subsurface exploration and geotechnical engineering services performed for the proposed Memorial High School Softball & Baseball Fields Artificial Turf located at 101 E Hackberry Ave. in McAllen, Texas. The purpose of these services is to provide information and geotechnical engineering recommendations relative to:

- Subsurface soil conditions
- Groundwater conditions
- Site preparation and earthwork
- Turf design guidelines

The geotechnical engineering Scope of Services for this project included the advancement of 7 test borings to depths of 10 feet below existing site grades.

Maps showing the site and boring locations are presented in the **Site Location** and **Exploration Plan** sections, respectively. The results of the laboratory testing performed on soil samples obtained from the site during the field exploration are included on the boring logs in the **Exploration Results** section.

**SITE CONDITIONS**

The following description of site conditions is derived from our site visit in association with the field exploration and our review of publicly available geologic and topographic maps.

| Item                         | Description   |
|------------------------------|---|
| <b>Parcel Information</b>    | The project site is located at 101 E Hackberry Ave. in McAllen, Texas.<br>Baseball Field: Latitude: 26.21280° N Longitude: 98.21760° W.<br>Softball Field: Latitude: 26.21460° N Longitude: -98.21730° W.<br>See <b>Site Location</b> |
| <b>Existing Improvements</b> | Existing softball and baseball fields.  |
| <b>Current Ground Cover</b>  | Planted grass.  |
| <b>Existing Topography</b>   | Relatively flat and level.  |

| Item           | Description  |
|----------------|--|
| <b>Geology</b> | Based on the Geologic Atlas of Texas, McAllen – Brownsville prepared by The University of Texas, the site is located on the Beaumont Formation of the Pleistocene Period of the Quaternary Age. The soils are mostly composed of clay, silt, sand, and gravel and include mainly stream channel, point bar, natural levee and backswamp deposits. Concretions and massive accumulations of calcium carbonate (caliche) and concretions of iron oxide and iron-manganese oxides can be found in the zone of weathering. In particular, the site is located in areas that are dominantly clay and mud of low permeability, high water-holding capacity, high compressibility, high to very high shrink-swell potential, poor drainage, level to depressed relief, low shear strength and high plasticity. Geologic units include interdistributary muds, abandoned channel-fill muds, and fluvial overbank muds. |

## PROJECT DESCRIPTION

| Item                       | Description   |
|----------------------------|---|
| <b>Project Description</b> | The project consists of upgrading the baseball and softball fields to synthetic turf. |

## GEOTECHNICAL CHARACTERIZATION

We have developed a general characterization of the subsurface conditions based upon our review of the subsurface exploration, laboratory data, geologic setting and our understanding of the project. This characterization, termed GeoModel, forms the basis of our geotechnical calculations and evaluation of site preparation and foundation options. Conditions encountered at each exploration point are indicated on the individual logs. The individual logs and the GeoModel can be found in the **Exploration Results** section of this report.

As part of our analyses, we identified the following model layers within the subsurface profile. For a more detailed view of the model layer depths at each boring location, refer to the GeoModel.

| Model Layer | Layer Name  | General Description  |
|-------------|-------------|--|
| 1           | <b>CLAY</b> | Lean clay, Sandy lean clay, Lean clay with sand (CL), and Fat Clay (CH)<br>Medium stiff to stiff |



## **Groundwater Conditions**

The boreholes were drilled to their termination depths (10 feet) using dry drilling techniques to aid in the observation of groundwater. Groundwater was not observed in the borings while drilling, or for the short duration that the borings were allowed to remain open. The boreholes can be found on the boring logs in **Exploration Results**.

Groundwater level fluctuations occur due to seasonal variations in the amount of rainfall, runoff and other factors not evident at the time the borings were performed. Therefore, groundwater levels during construction or at other times in the life of the structure may be higher or lower than the levels indicated on the boring logs. The possibility of groundwater level fluctuations should be considered when developing the design and construction plans for the project. The boreholes were backfilled with on-site soil cuttings after completion of the groundwater level observations.

## **GEOTECHNICAL OVERVIEW**

Final grading for the proposed fields was not available at the time of this report. However, we anticipate that the new surface will have a final grade elevation at or near existing grade. If this information changes, we should be contacted to review and revise our recommendation as appropriate.

The near surface soils could become unstable with typical earthwork and construction traffic, especially after precipitation events. The effective drainage should be completed early in the construction sequence and maintained after construction to avoid potential issues. If possible, the grading should be performed during the warmer and drier times of the year. If grading is performed during the winter months, an increased risk for possible undercutting and replacement of unstable subgrade will persist. Additional site preparation recommendations, including subgrade improvement and fill placement, are provided in the **Earthwork** section.

Ground movements at this site would most likely be related to vertical movements associated with expansive soils. These vertical soil movements can occur differentially and create cracks in the aggregate base. Additionally, base will weather with time becoming harder, less flexible (more brittle) and more subject to cracking. Water may enter cracks in the base which can lead to weakening of the material bonds and further degradation of the section. Some options can be implemented during construction of the new field to help reduce differential movements and cracking. Some of these options include the following:

- Reducing the Potential Vertical Rise (PVR) of the subgrade soils;
- Providing and maintaining positive drainage; and
- Providing subsurface drainage to collect and remove infiltrating water.

Even with the above options, some periodic maintenance should be expected.

The subsurface soils at this site generally exhibit a moderate expansion potential. Based on the information developed from our field and laboratory programs and on method TEX-124-E in the Texas Department of Transportation (TxDOT) Manual of Testing Procedures, we estimate that the subgrade soils at this site exhibit a Potential Vertical Rise (PVR) of between 1 and 1½ inches in present condition.

## **EARTHWORK**

The construction areas should be stripped of any grass, topsoil, construction debris and other unsuitable materials. The following sections provide recommendations for use in the preparation of specifications for the work. Recommendations include critical quality criteria, as necessary, to render the site in the state considered in our geotechnical engineering evaluation for a new artificial turf.

### **Site Preparation**

Prior to placing fill, any buried structures and vegetation should be removed. Complete stripping of the topsoil should be performed in the field areas.

Once final subgrade elevations have been achieved, the exposed subgrade should be carefully proofrolled with a 15-ton pneumatic roller or a fully loaded dump truck to detect weak zones in the subgrade. Special care should be exercised when proofrolling the fill soils to detect soft/weak areas. Weak areas observed may be replaced with clean on-site soils or select fill. Proper site drainage should be maintained during construction so that ponding of surface runoff does not occur and causes construction delays and/or inhibit site access.

Subsequent to proofrolling, and just prior to placement of fill, the exposed subgrade within the construction area should be evaluated for moisture and density. If the moisture, density, and/or the requirements do not meet project requirements, the subgrade should be scarified to a minimum depth of 8 inches, moisture adjusted and compacted to at least 95 percent of the Standard Effort (ASTM D 698) maximum dry density.

### **Fill Material Types**

Engineered fill should consist of approved materials, free of organic material, debris and particles larger than about 2 inches. The maximum particle size criteria may be relaxed by the geotechnical engineer of record depending on construction techniques, material gradation, allowable lift thickness and observations during fill placement. Soils for use as engineered fill material should conform to the following specifications:

| Fill Type <sup>1</sup>                                | USCS Classification           | Acceptable Location for Placement  |
|---|-------------------------------|--|
| <b>Aggregate Base and Subbase Course</b> <sup>2</sup> | Varies                        | Can be used in the field under the synthetic turf surface.   |
| <b>Select Fill</b>                                    | CL and/or SC<br>(7 ≤ PI ≤ 20) | Must be used to construct the fill body and all grade adjustments within the field areas.  |
| <b>On-Site Soils</b>                                  | CL and CH                     | On-site soils may be suitable for use as fill within the project areas if they are free from organics, cohesive and have a Plasticity Index (PI) between 7 and 20. |
| <b>Flowable Fill</b> <sup>3</sup>                     | ---                           | Confined areas and backfill existing utility trenches.   |

1. Prior to any filling operations, samples of the proposed borrow and on-site materials should be obtained for laboratory moisture-density testing. The tests will provide a basis for evaluation of fill compaction by in-place density testing. A qualified soil technician should perform sufficient in-place density tests during the filling operations to evaluate that proper levels of compaction, including dry unit weight and moisture content, are being attained.
2. Crushed limestone and crushed concrete material should meet the requirements of 2014 TxDOT Item 247, Type A, or D, Grades 1-2 and/or 3 or turf manufacturer's specifications. The select fill materials should be free of organic material and debris and should not contain stones larger than 2 inches in the maximum dimension. The clayey gravel and caliche materials should meet the gradation requirements of Item 247, Type B, Grades 1-2 and/or 3 as specified in the 2014 TxDOT Standard Specifications Manual and a Plasticity Index between 7 and 20.
3. Excavatable flowable fill should have a 28-day strength between 80 and 200 psi and meet the requirements for 2014 TxDOT Item 401. Although usually costlier, flowable fill does not require placement in lifts or mechanical compaction.

## Fill Compaction Requirements

Structural and general fill should meet the following compaction requirements.

| Item   | Description   |
|--|---|
| <b>Fill Lift Thickness</b>                                     | The fill should be placed in loose lifts of about 8 inches, with compacted thickness not exceeding 6 inches.  |
| <b>Compaction Requirements (on-site soils and select fill)</b> | The on-site soils and select fill should be compacted to at least 95 percent of The Standard Effort (ASTM D698) maximum dry density within 2 percentage points of the optimum moisture content. |

## Wet Weather/Soft Subgrade Considerations

Construction operations may encounter difficulties due to the wet or soft surface soils becoming a general hindrance to equipment due to rutting and pumping of the soil surface, especially during and soon after periods of wet weather.

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If the subgrade cannot be adequately compacted to minimum densities as described above, one of the following measures will be required:

- Removal and replacement with select fill,
- Chemical treatment of the soil to dry and increase the stability of the subgrade, or
- Drying by natural means if the schedule allows.

In our experience with similar soils in this area, chemical treatment is the most efficient and effective method to increase the supporting value of wet and weak subgrade. Terracon should be contacted for additional recommendations if chemical treatment of the soils is needed.

Prior to placing any fill, all surface vegetation, topsoil, possible fill material and any otherwise unsuitable materials should be removed from the construction areas. Wet or dry material should either be removed, or moisture conditioned and recompacted. After stripping and grubbing, the subgrade should be proof-rolled where possible to aid in locating loose or soft areas. Proof-rolling can be performed with a 15-ton roller or fully loaded dump truck. Soft, dry and low-density soil should be removed or compacted in place prior to placing fill.

### Grading and Drainage

Positive drainage should be provided during construction and maintained throughout the life of the development. Infiltration of water into utility trenches excavations should be prevented during construction. Backfill in utility trenches, should be well compacted and free of all construction debris to reduce the possibility of moisture infiltration.

Consideration should be given to extending drainage piping to day light at the face of curbs then empty onto the appropriate drainage.

Utility trenches are a common source of water infiltration and migration. All utility trenches that penetrate beneath the field should be effectively sealed to restrict water intrusion and flow through the trenches that could migrate below the new surface.

We recommend constructing an effective clay "trench plug" that extends at least 5 feet out from the face of the field perimeter. The plug material should consist of clay compacted at a water content at or above the soils optimum water content. The clay fill should be placed to surround the utility line and be compacted in accordance with recommendations in this report. In addition, the turf manufacturer drainage installation within the field area should be followed.

## **Earthwork Construction Considerations**

Shallow excavations for the proposed construction are anticipated to be accomplished with conventional construction equipment. Upon completion of filling and grading, care should be taken to maintain the subgrade water content prior to construction. Construction traffic over the completed subgrade should be avoided. The site should also be graded to prevent ponding of surface water on the prepared subgrade or in excavations. Water collecting over or adjacent to construction areas should be removed. If the subgrade freezes, desiccates, saturates, or is disturbed, the affected material should be removed, or the materials should be scarified, moisture conditioned, and recompacted prior to artificial turf construction.

The groundwater table could affect overexcavation efforts, especially for over-excavation and replacement of lower strength soils. A temporary dewatering system consisting of sumps with pumps could be necessary to achieve the recommended depth of over-excavation.

As a minimum, excavations should be performed in accordance with OSHA 29 CFR, Part 1926, Subpart P, "Excavations" and its appendices, and in accordance with any applicable local, and/or state regulations.

Construction site safety is the sole responsibility of the contractor who controls the means, methods, and sequencing of construction operations. Under no circumstances shall the information provided herein be interpreted to mean Terracon is assuming responsibility for construction site safety, or the contractor's activities; such responsibility shall neither be implied nor inferred.

## **Construction Observation and Testing**

The earthwork efforts should be monitored under the direction of the Geotechnical Engineer. Monitoring should include documentation of adequate removal of vegetation and topsoil, proofrolling, and mitigation of areas delineated by the proofroll to require mitigation.

Each lift of compacted fill should be tested, evaluated, and reworked, as necessary, until approved by the Geotechnical Engineer prior to placement of additional lifts. Each lift of fill should be tested for density and water content at a frequency of at least one test for every 2,500 square feet of compacted fill in the field areas. One density and water content test should be performed for every 50 linear feet of compacted utility trench backfill.

In areas of foundation excavations, the bearing subgrade should be evaluated under the direction of the Geotechnical Engineer. If unanticipated conditions are encountered, the Geotechnical Engineer should prescribe mitigation options.

The essential parameters necessary for construction, the continuation of the Geotechnical Engineer into the construction phase of the project provides the continuity to maintain the Geotechnical Engineer's evaluation of subsurface conditions, including assessing variations and associated design changes.

## **TURF**

The synthetic field surfaces (turf) are constructed of an all-weather surface supported by a granular section, which consists of synthetic turf, aggregate base, aggregate subbase, geotextile membrane, a properly moisture conditioned and compacted subgrade and a drainage system. The artificial turfs, especially those supported by expansive clay soils may be subject to movement and cracking, thus requiring periodic maintenance.

### **General Turf Comments**

A critical aspect of turf performance is site preparation. Synthetic field surface recommendations, noted in this section, must be applied to the site, which has been prepared as recommended in the **Site Preparation** section.

We recommend the moisture content and density of the top 6 inches of the subgrade be evaluated and the subgrade be proofrolled within two days prior to commencement of actual aggregate subbase placement operations. Areas not in compliance with the required ranges of moisture or density should be moisture conditioned and re-compacted.

Particular attention should be paid to high traffic areas that were rutted and disturbed earlier and to areas where backfilled trenches are located. Areas where unsuitable conditions are located should be repaired by removing and replacing the materials with properly compacted fills.

If a significant precipitation event occurs after the evaluation or if the surface becomes disturbed, the subgrade should be reviewed by qualified personnel immediately prior to construction. The subgrade should be in its finished form at the time of the final review.

Based on the subsurface conditions, we anticipate that the subgrade will generally consist of the on-site soils. The top 6 inches of the finished subgrade soils directly beneath the aggregate subbase may be chemically treated. Chemical treatment will increase the supporting value of the subgrade and decrease the effect of moisture on subgrade soils.



The proposed Synthetic Turf may consist of the following thickness section.

| Component  | Thickness                         |
|--|-----------------------------------|
| Turf Surface   | As determined by the manufacturer |
| Finishing Top Stone (Aggregate Base)   |                                   |
| Aggregate Subbase  |                                   |
| Geotextile Membrane  |                                   |
| Moisture Conditioned or Treated Subgrade <sup>1</sup>  | Minimum 6 inches                  |
| <sup>1.</sup> Prepared subgrade as recommended in the <b>Earthwork</b> and <b>Turf</b> sections of this report |                                   |

Proper perimeter drainage is very important and should be provided so infiltration of surface water from surrounding areas is minimized.

We recommend constructing a concrete curb/wall around the perimeter of the field. The structure will help to isolate the near surface soils beneath the turf section from moisture variations. The curbs should extend through the base at least 24 inches below the aggregate base material. The inside face of each curb should be lined with a 20-mil polypropylene membrane. This will help reduce migration of subsurface water into the aggregate base course from adjacent areas. A crack sealant compatible to both asphalt and concrete should be provided at all concrete-asphalt interfaces.

### **Section Materials**

Aggregate Base and Subbase Material: Crushed limestone and crushed concrete material should meet the requirements of 2014 TxDOT Item 247, Type A, or D, Grades 1-2 and/or 3 or turf manufacturer’s specifications.

As an alternate to the Type A base, treated “caliche” material meeting the requirements of 2014 TxDOT Standard Specification Manual Item 247, Type B, Grade 1-2 and/or 3 may be used.

The granular base should be compacted to at least 95 percent of the maximum dry density determined in accordance with the modified moisture-density relationship (ASTM D 1557) at moisture content within 2 percentage points of the optimum moisture content.

Treated Subgrade: The subgrade soils should be treated with lime (modifier) in accordance with 2014 TxDOT Standard Specifications Item 260. The recommended percentage of modifier is for estimating and planning. The actual quantity of modifier required should be determined at the time of construction by laboratory tests on bulk samples of the subgrade soils.

We anticipate that the on-site surficial soils be treated with about 4 percent of modifier. This percentage is given as application by dry weight and is typically equivalent to about 18 pounds of modifier per square yard per 6-inch depth. The subgrade should be compacted to a minimum of 95 percent of the Standard Effort (ASTM D 698) maximum dry density within 2 percentage points of the optimum moisture content. Preferably, traffic, should be kept off the treated subgrade for about 3 to 5 days to facilitate curing of the soil - chemical mixture; in addition, the subgrade is not suitable for heavy construction traffic prior to paving.

Post-construction subgrade movements and some cracking of the pavements are not uncommon for subgrade conditions such as those observed at this site. Although chemical treatment of the subgrade will help to reduce such movement/cracking, this movement/cracking cannot be economically eliminated.

Moisture Conditioned Subgrade: The subgrade should be scarified to a depth of 6 inches and moisture conditioned within 2 percentage points of the optimum moisture content. The subgrade should then be compacted to at least 95 percent of the maximum dry density determined in accordance with ASTM D 698. This should result in a compacted, moisture conditioned layer about 8 inches thick.

Turf Surface, Finishing Top Stone, Aggregate Subbase and Geotextile: These materials should be in accordance with the criteria provided by the manufacturer.

## **Construction Design Considerations**

Turf performance is affected by its surroundings. In addition to providing preventive maintenance, the civil engineer should consider the following recommendations in the design:

- The subgrade and the turf surface should be sloped to promote proper surface drainage;
- Install drainage system surrounding areas anticipated for frequent wetting;
- Place curb, gutter and/or sidewalk directly on low permeability subgrade soils rather than on unbound granular base course materials.

## **Field Drainage**

Turf surface should be sloped to provide rapid drainage of surface water. Water allowed to pond on or adjacent to the field could saturate the subgrade and contribute to premature turf deterioration. In addition, the subgrade should be graded to provide positive drainage within the granular base section. Appropriate sub-drainage or connection to a suitable daylight outlet should be provided to remove water from the granular subbase.

## **Field Maintenance**

The turf sections provided in this report represent minimum recommended thicknesses and, as such, periodic maintenance should be anticipated. Therefore, preventive maintenance should be planned and provided for through an on-going turf management program.

Maintenance activities are intended to slow the rate of turf deterioration and to preserve the investment. Maintenance consists of both localized maintenance (e.g. crack and joint sealing and patching) and global maintenance (e.g. surface sealing). Preventive maintenance is usually the priority when implementing a turf maintenance program. Additional engineering observation is recommended to determine the type and extent of a cost-effective program. Even with periodic maintenance, some movements and related cracking may still occur, and repairs may be required.

## **GENERAL COMMENTS**

Our analysis and opinions are based upon our understanding of the project, the geotechnical conditions in the area, and the data obtained from our site exploration. Natural variations will occur between exploration point locations or due to the modifying effects of construction or weather. The nature and extent of such variations may not become evident until during or after construction. Terracon should be retained as the Geotechnical Engineer, where noted in this report, to provide observation and testing services during pertinent construction phases. If variations appear, we can provide further evaluation and supplemental recommendations. If variations are noted in the absence of our observation and testing services on-site, we should be immediately notified so that we can provide evaluation and supplemental recommendations.

Our Scope of Services does not include either specifically or by implication any environmental or biological (e.g., mold, fungi, bacteria) assessment of the site or identification or prevention of pollutants, hazardous materials or conditions. If the owner is concerned about the potential for such contamination or pollution, other studies should be undertaken.

Our services and any correspondence or collaboration through this system are intended for the sole benefit and exclusive use of our client for specific application to the project discussed and are accomplished in accordance with generally accepted geotechnical engineering practices with no third-party beneficiaries intended. Any third-party access to services or correspondence is solely for information purposes to support the services provided by Terracon to our client. Reliance upon the services and any work product is limited to our client, and is not intended for third parties. Any use or reliance of the provided information by third parties is done solely at their own risk. No warranties, either express or implied, are intended or made.

Site characteristics as provided are for design purposes and not to estimate excavation cost. Any use of our report in that regard is done at the sole risk of the excavating cost estimator as there

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may be variations on the site that are not apparent in the data that could significantly impact excavation cost. Any parties charged with estimating excavation costs should seek their own site characterization for specific purposes to obtain the specific level of detail necessary for costing. Site safety, and cost estimating including, excavation support, and dewatering requirements/design are the responsibility of others. If changes in the nature, design, or location of the project are planned, our conclusions and recommendations shall not be considered valid unless we review the changes and either verify or modify our conclusions in writing.

## ATTACHMENTS

## EXPLORATION AND TESTING PROCEDURES

### Field Exploration

| Number of Borings | Boring Depth (feet) <sup>1</sup> | Location                     |
|-------------------|----------------------------------|------------------------------|
| 7                 | 10                               | Softball and Baseball Fields |

1. Below ground surface

**Boring Layout and Elevations:** Terracon personnel provided the boring layout. Coordinates were obtained with a handheld GPS unit (estimated horizontal accuracy of about ±10 feet).

**Subsurface Exploration Procedures:** We advanced the soil borings with a truck-mounted drill rig using continuous flight augers (solid stem and/or hollow stem as necessary depending on soil conditions). Three samples were obtained in the upper 5 feet of the borings. Soil sampling was performed using thin-wall tube and/or split-barrel sampling procedures. We observed and recorded groundwater levels during drilling and sampling. For safety purposes, the borings were backfilled with auger cuttings after their completion.

The sampling depths, penetration distances, and other sampling information were recorded on the field boring logs. The samples were placed in appropriate containers and taken to our soil laboratory for testing and classification by a geotechnical engineer. Our exploration team prepared field boring logs as part of the drilling operations. The field logs included visual classifications of the materials encountered during drilling and our interpretation of the subsurface conditions between samples. Final boring logs were prepared from the field log. The final boring logs represent the geotechnical engineer's interpretation of the field logs and include modifications based on observations and tests of the samples in our laboratory.

### Laboratory Testing

The project engineer reviewed the field data and assigned various laboratory tests to better understand the engineering properties of the various soil strata as necessary for this project.

- ASTM D2216 Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass
- ASTM D4318 Standard Test Methods for Liquid Limit, Plastic Limit, and Plasticity Index of Soils
- ASTM D422 Standard Test Method for Particle-Size Analysis of Soils



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The laboratory testing program often included examination of soil samples by an engineer. Based on the material's texture and plasticity, we described and classified the soil samples in accordance with the Unified Soil Classification System (USCS).

## **SITE LOCATION AND EXPLORATION PLANS**

### **Contents:**

Site Location Plan

Exploration Plan

**SITE LOCATION**

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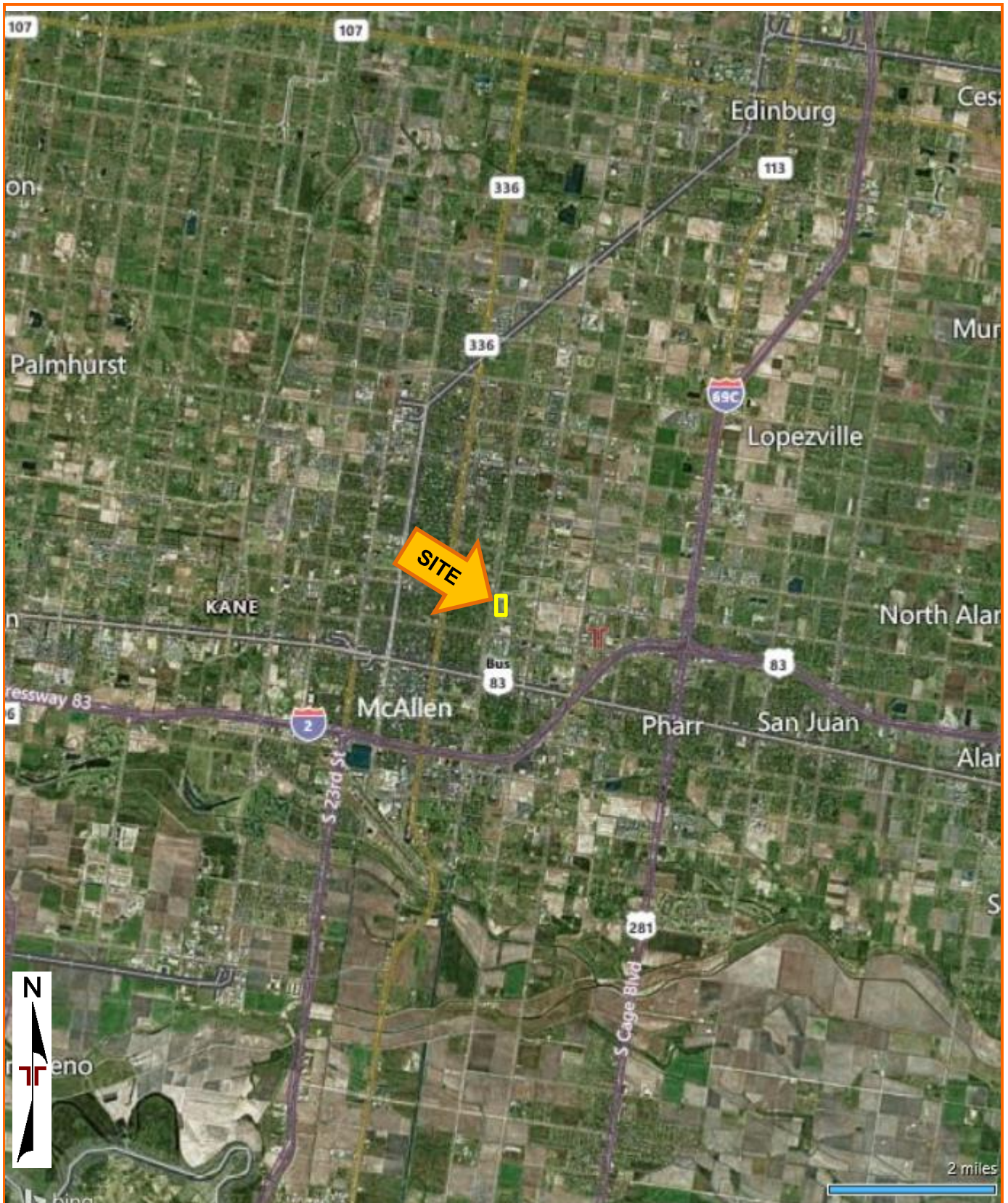


DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

MAP PROVIDED BY MICROSOFT BING MAPS



**EXPLORATION PLAN**

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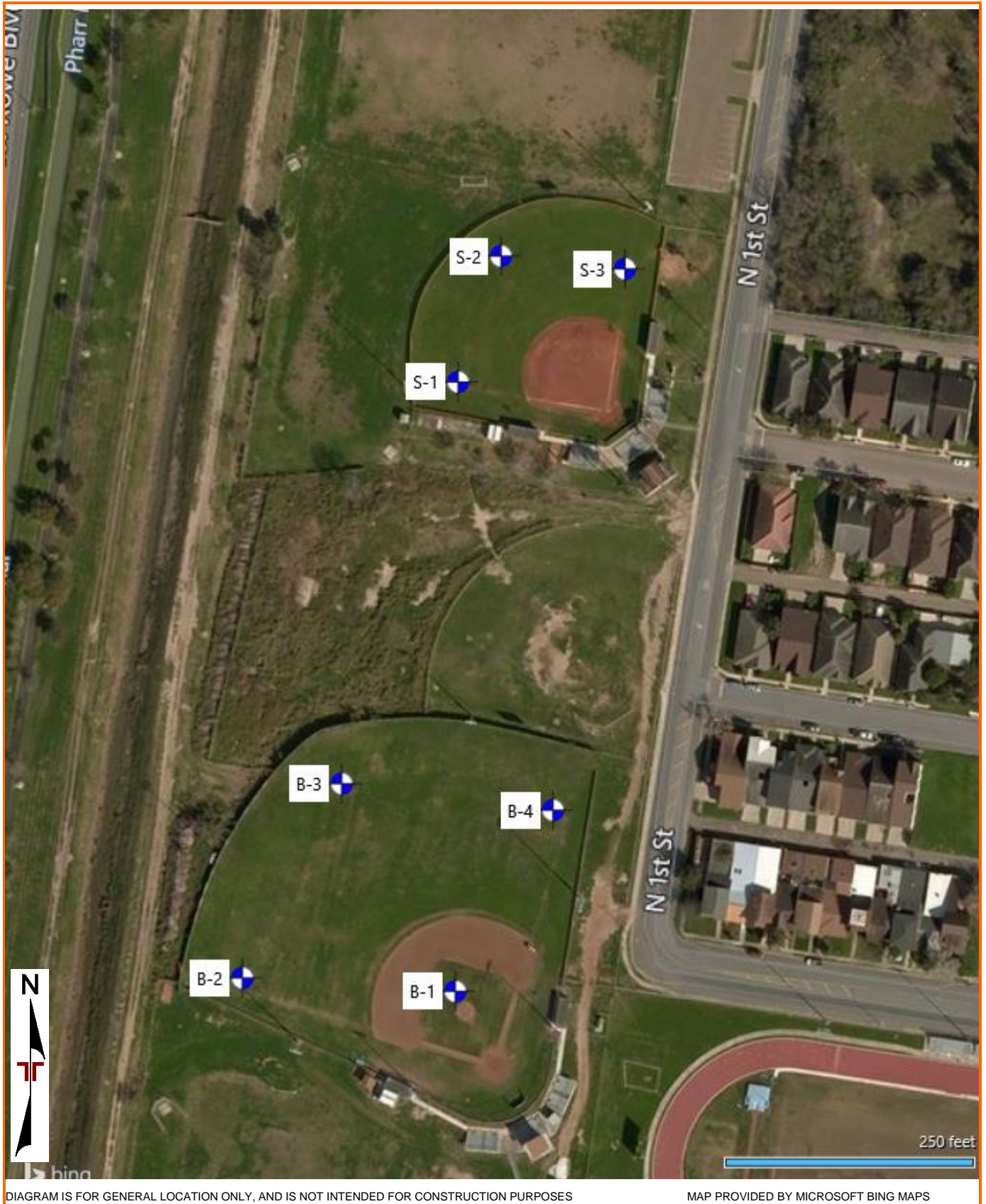


DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

MAP PROVIDED BY MICROSOFT BING MAPS

## EXPLORATION RESULTS

**Contents:**  
Boring Logs  
GeoModel

# BORING LOG NO. B-1

**PROJECT:** devon

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 101 E Hackberry Ave.  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2129° Longitude: -98.2176°   | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | DRY UNIT WEIGHT (pcf) | ATTERBERG LIMITS<br>LL-PL-PI | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|-----------------------|------------------------------|---------------|
|             |             | DEPTH  |             |                          |             |                    |                   |                       |                              |               |
| 1           |             | <p><b>SANDY LEAN CLAY (CL)</b>, dark brown to brown, medium stiff to stiff</p> <p>- trace gravel at 2½ feet</p> <p>- with sand below 6½ feet</p> | 5           | X                        |             | 4-3-4<br>N=7       | 17.9              |                       | 43-14-29                     |               |
|             |             |  |             | X                        |             | 4-5-5<br>N=10      | 17.6              |                       |                              | 63            |
|             |             |  |             | X                        |             | 5-6-5<br>N=11      | 21.4              |                       | 39-14-25                     |               |
|             |             |  |             | X                        |             | 6-6-5<br>N=11      | 22.2              |                       |                              | 75            |
|             |             |  |             | X                        |             | 7-6-6<br>N=12      | 20.7              |                       |                              |               |
|             |             | 10.0   |             |                          |             |                    |                   |                       |                              |               |
|             |             | <b>Boring Terminated at 10 Feet</b>  |             |                          |             |                    |                   |                       |                              |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered



Boring Started: 10-22-2021

Boring Completed: 10-22-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215142

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215142 MEMORIAL HS BASEB.GPJ TERRACON\_DATATEMPLATE.GDT 11/3/21



# BORING LOG NO. B-2

**PROJECT:** devon

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 101 E Hackberry Ave.  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2129° Longitude: -98.2183° | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | DRY UNIT WEIGHT (pcf) | ATTERBERG LIMITS<br>LL-PL-PI | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|-----------------------|------------------------------|---------------|
|             | 1           | <b>LEAN CLAY (CL)</b> , trace gravel, dark brown to brown, medium stiff to stiff         | 5           | X                        |             | 5-5-4<br>N=9       | 15.7              |                       | 43-13-30                     |               |
|             |             |  | 5           | X                        |             | 4-3-4<br>N=7       | 18.5              |                       |                              | 74            |
|             |             |  | 5           | X                        |             | 4-4-6<br>N=10      | 18.3              |                       |                              |               |
|             |             |  | 5           | X                        |             | 5-6-6<br>N=12      | 15.5              |                       | 42-13-29                     |               |
|             |             |  | 10          | X                        |             | 7-6-7<br>N=13      | 18.4              |                       |                              | 73            |
|             |             | <b>Boring Terminated at 10 Feet</b>  | 10.0        |                          |             |                    |                   |                       |                              |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered

Cave-in



Boring Started: 10-22-2021

Boring Completed: 10-22-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215142

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215142 MEMORIAL HS BASEB.GPJ TERRACON\_DATATEMPLATE.GDT 11/3/21

# BORING LOG NO. B-3

**PROJECT:** devon

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 101 E Hackberry Ave.  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2135° Longitude: -98.2180° | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | DRY UNIT WEIGHT (pcf) | ATTERBERG LIMITS<br>LL-PL-PI | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|-----------------------|------------------------------|---------------|
|             |             | DEPTH  |             |                          |             |                    |                   |                       |                              |               |
|             | 1           | <b>SANDY LEAN CLAY (CL)</b> , dark brown to brown, medium stiff to stiff                 |             |                          |             |                    |                   |                       |                              |               |
|             |             |  | 5           | X                        |             | 4-4-4<br>N=8       | 15.3              |                       | 42-15-27                     |               |
|             |             |  |             | X                        |             | 3-3-4<br>N=7       | 17.9              |                       |                              | 69            |
|             |             |  |             | X                        |             | 4-3-3<br>N=6       | 19.7              |                       | 42-16-26                     |               |
|             |             |  |             | X                        |             | 5-5-6<br>N=11      | 20.4              |                       |                              | 65            |
|             |             |  |             | X                        |             | 6-7-5<br>N=12      | 19.5              |                       |                              |               |
|             |             |  | 10.0        |                          |             |                    |                   |                       |                              |               |
|             |             | <b>Boring Terminated at 10 Feet</b>  |             |                          |             |                    |                   |                       |                              |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered

Boring Started: 10-22-2021

Boring Completed: 10-22-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215142

Cave-in



THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215142 MEMORIAL HS BASEB.GPJ TERRACON\_DATATEMPLATE.GDT 11/3/21

# BORING LOG NO. B-4

**PROJECT:** devon

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 101 E Hackberry Ave.  
McAllen, TX

| MODEL LAYER  | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2134° Longitude: -98.2173°  | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE                     | FIELD TEST RESULTS   | WATER CONTENT (%)                                    | DRY UNIT WEIGHT (pcf) | ATTERBERG LIMITS<br>LL-PL-PI                         | PERCENT FINES |
|--|-------------|---|-------------|--------------------------|---------------------------------|--|--|-----------------------|--|---------------|
| 1  |             | <b>SANDY LEAN CLAY (CL)</b> , dark brown to brown, medium stiff to stiff<br>- with fat clay (CH) seams to 2 feet<br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br><br>- below 4½ feet with sand, brown and gray | 10.0        |                          | X<br>X<br>X<br>X<br>X<br>X<br>X | 5-4-4<br>N=8<br><br>3-4-4<br>N=8<br><br>4-3-4<br>N=7<br><br>4-5-5<br>N=10<br><br>5-4-6<br>N=10 | 18.0<br><br>22.4<br><br>18.7<br><br>21.1<br><br>24.6 |                       | 50-16-34<br><br><br>64<br><br>44-16-28<br><br><br>82 |               |
| <p style="text-align: center;"><b>Boring Terminated at 10 Feet</b></p> |             |   | 10          |                          |                                 |  |  |                       |  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**  
*Groundwater not encountered*



Boring Started: 10-22-2021

Boring Completed: 10-22-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215142

Cave-in

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_ 88215142 MEMORIAL HS BASEB.GPJ TERRACON\_DATATEMPLATE.GDT 11/3/21

# BORING LOG NO. S-1

**PROJECT:** devon

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 101 E Hackberry Ave.  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2146° Longitude: -98.2176°   | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | DRY UNIT WEIGHT (pcf) | ATTERBERG LIMITS<br>LL-PL-PI | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|-----------------------|------------------------------|---------------|
|             | 1           | <p><b>LEAN CLAY (CL)</b>, with sand, dark brown to brown, medium stiff to stiff</p> <p style="text-align: center;">- sandy below 8½ feet</p> | 5           | X                        |             | 5-4-5<br>N=9       | 18.2              |                       | 40-16-24                     |               |
|             |             |  |             | X                        |             | 4-3-3<br>N=6       | 21.7              |                       |                              | 80            |
|             |             |  |             | X                        |             | 3-4-3<br>N=7       | 22.0              |                       |                              |               |
|             |             |  |             | X                        |             | 6-6-7<br>N=13      | 18.2              |                       | 36-17-19                     |               |
|             |             |  |             | X                        |             | 5-7-6<br>N=13      | 20.0              |                       |                              | 64            |
|             |             | 10.0   |             |                          |             |                    |                   |                       |                              |               |
|             |             | <b>Boring Terminated at 10 Feet</b>  |             |                          |             |                    |                   |                       |                              |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered

Cave-in



Boring Started: 10-22-2021

Boring Completed: 10-22-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215142

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215142 MEMORIAL HS BASEB.GPJ TERRACON\_DATATEMPLATE.GDT 11/3/21

# BORING LOG NO. S-2

**PROJECT:** devon

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 101 E Hackberry Ave.  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2149° Longitude: -98.2175° | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | DRY UNIT WEIGHT (pcf) | ATTERBERG LIMITS<br>LL-PL-PI | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|-----------------------|------------------------------|---------------|
|             | 1           | <b>LEAN CLAY (CL)</b> , with sand, dark brown to brown, medium stiff to stiff            | 5           | X                        |             | 6-5-4<br>N=9       | 16.0              |                       | 42-17-25                     |               |
|             |             |  | 5           | X                        |             | 4-4-5<br>N=9       | 22.4              |                       |                              | 76            |
|             |             |  | 5           | X                        |             | 5-4-3<br>N=7       | 23.0              |                       | 45-19-26                     |               |
|             |             |  | 5           | X                        |             | 3-4-6<br>N=10      | 17.5              |                       |                              | 64            |
|             |             |  | 10          | X                        |             | 6-7-7<br>N=14      | 17.0              |                       |                              |               |
|             |             | <b>Boring Terminated at 10 Feet</b>  |             |                          |             |                    |                   |                       |                              |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered

Cave-in



Boring Started: 10-22-2021

Boring Completed: 10-22-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215142

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215142 MEMORIAL HS BASEB.GPJ TERRACON\_DATATEMPLATE.GDT 11/3/21

# BORING LOG NO. S-3

**PROJECT:** devon

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 101 E Hackberry Ave.  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2149° Longitude: -98.2171°   | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE  | FIELD TEST RESULTS  | WATER CONTENT (%)                         | DRY UNIT WEIGHT (pcf) | ATTERBERG LIMITS<br>LL-PL-PI | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|--|---|---|-----------------------|------------------------------|---------------|
|             | 1           | <p><b>LEAN CLAY (CL)</b>, with sand, dark brown to brown, medium stiff to stiff</p> <p style="text-align: center; margin-top: 20px;">- sandy below 6½ feet</p> | <p>10.0</p> | <p>5</p>                 | <p>4-3-4<br/>N=7</p> <p>5-4-3<br/>N=7</p> <p>3-3-3<br/>N=6</p> <p>6-6-7<br/>N=13</p> <p>7-5-7<br/>N=12</p> | <p>18.8</p> <p>21.6</p> <p>20.2</p> <p>15.1</p> <p>19.0</p> | <p>38-15-23</p> <p>71</p> <p>39-17-22</p> | <p>71</p>             |                              |               |
|             |             | <b>Boring Terminated at 10 Feet</b>  | 10          |                          |  |   |   |                       |                              |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered

Cave-in



Boring Started: 10-22-2021

Boring Completed: 10-22-2021

Drill Rig: CME 55

Driller: SWD

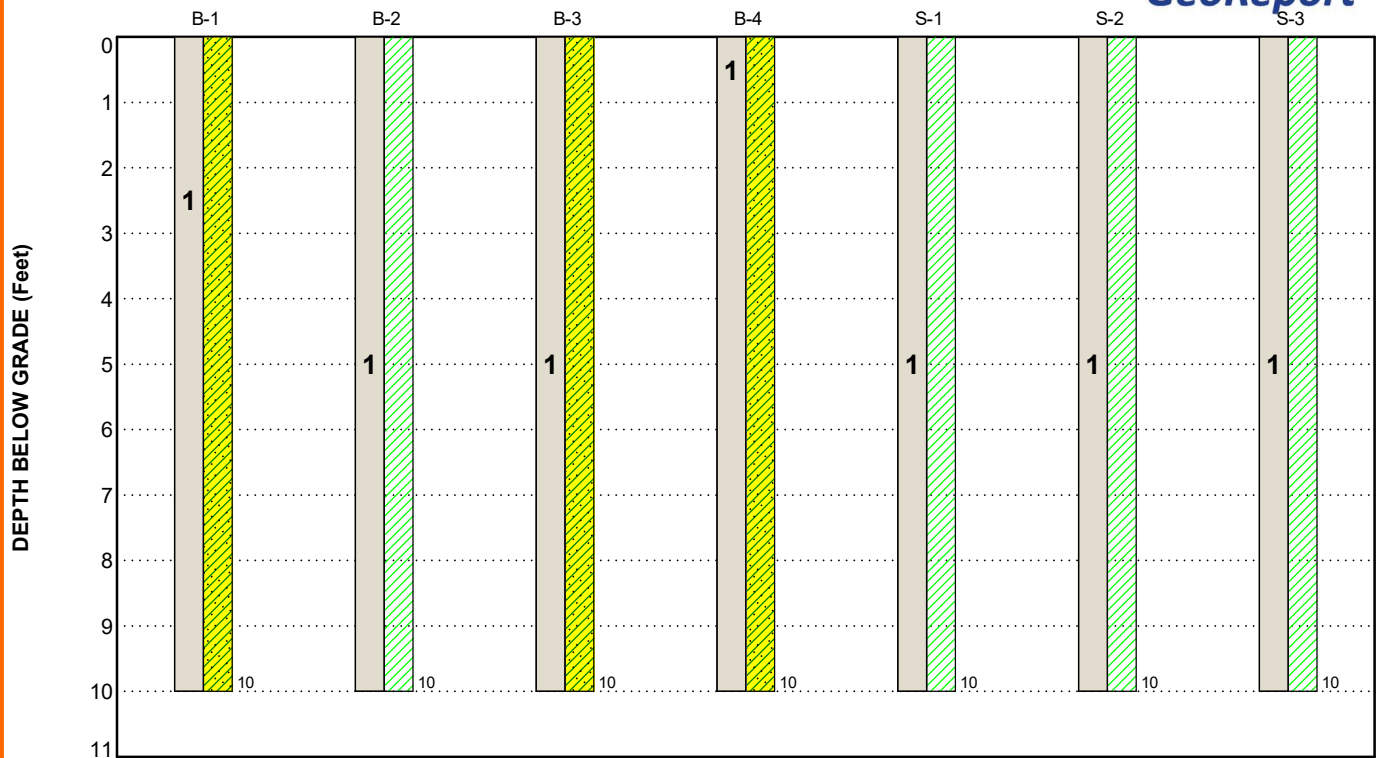
Project No.: 88215142

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**GEOMODEL**


devon ■ McAllen, TX  
Terracon Project No. 88215142




This is not a cross section. This is intended to display the Geotechnical Model only. See individual logs for more detailed conditions.

| Model Layer | Layer Name | General Description   |
|-------------|------------|---|
| 1           | CLAY       | Lean clay, Sandy lean clay, lean clay with sand (CL) and Fat clay (CH)<br>Medium stiff to stiff |

**LEGEND**

 Sandy Lean Clay

 Lean Clay

**NOTES:**

Layering shown on this figure has been developed by the geotechnical engineer for purposes of modeling the subsurface conditions as required for the subsequent geotechnical engineering for this project. Numbers adjacent to soil column indicate depth below ground surface.

## **SUPPORTING INFORMATION**

### **Contents:**

General Notes

Unified Soil Classification System

**GENERAL NOTES**

**DESCRIPTION OF SYMBOLS AND ABBREVIATIONS**

| SAMPLING                   | WATER LEVEL   | FIELD TESTS  |  |
|----------------------------|---|--|--|
| Shelby Tube<br>Split Spoon | <b>Water Initially Encountered</b><br><b>Water Level After a Specified Period of Time</b><br><b>Water Level After a Specified Period of Time</b><br><br>Water levels indicated on the soil boring logs are the levels measured in the borehole at the times indicated. Groundwater level variations will occur over time. In low permeability soils, accurate determination of groundwater levels is not possible with short term water level observations. | <b>N</b> Standard Penetration Test Resistance (Blows/Ft.)<br><br><b>(HP)</b> Hand Penetrometer<br><br><b>(T)</b> Torvane<br><br><b>(DCP)</b> Dynamic Cone Penetrometer<br><br><b>UC</b> Unconfined Compressive Strength<br><br><b>(PID)</b> Photo-Ionization Detector<br><br><b>(OVA)</b> Organic Vapor Analyzer |  |

**DESCRIPTIVE SOIL CLASSIFICATION**

Soil classification is based on the Unified Soil Classification System. Coarse Grained Soils have more than 50% of their dry weight retained on a #200 sieve; their principal descriptors are: boulders, cobbles, gravel or sand. Fine Grained Soils have less than 50% of their dry weight retained on a #200 sieve; they are principally described as clays if they are plastic, and silts if they are slightly plastic or non-plastic. Major constituents may be added as modifiers and minor constituents may be added according to the relative proportions based on grain size. In addition to gradation, coarse-grained soils are defined on the basis of their in-place relative density and fine-grained soils on the basis of their consistency.

**LOCATION AND ELEVATION NOTES**

Unless otherwise noted, Latitude and Longitude are approximately determined using a hand-held GPS device. The accuracy of such devices is variable. Surface elevation data annotated with +/- indicates that no actual topographical survey was conducted to confirm the surface elevation. Instead, the surface elevation was approximately determined from topographic maps of the area.

**STRENGTH TERMS**

| RELATIVE DENSITY OF COARSE-GRAINED SOILS<br><small>(More than 50% retained on No. 200 sieve.)<br/>Density determined by Standard Penetration Resistance</small> |   | CONSISTENCY OF FINE-GRAINED SOILS<br><small>(50% or more passing the No. 200 sieve.)<br/>Consistency determined by laboratory shear strength testing, field visual-manual procedures or standard penetration resistance</small> |   |   |
|---|---|---|---|---|
| Descriptive Term (Density)  | Standard Penetration or N-Value Blows/Ft. | Descriptive Term (Consistency)  | Unconfined Compressive Strength Qu, (tsf) | Standard Penetration or N-Value Blows/Ft. |
| Very Loose  | 0 - 3                                     | Very Soft   | less than 0.25                            | 0 - 1                                     |
| Loose   | 4 - 9                                     | Soft  | 0.25 to 0.50                              | 2 - 4                                     |
| Medium Dense  | 10 - 29                                   | Medium Stiff  | 0.50 to 1.00                              | 4 - 8                                     |
| Dense   | 30 - 50                                   | Stiff   | 1.00 to 2.00                              | 8 - 15                                    |
| Very Dense  | > 50                                      | Very Stiff  | 2.00 to 4.00                              | 15 - 30                                   |
|   |   | Hard  | > 4.00                                    | > 30                                      |

| RELATIVE PROPORTIONS OF SAND AND GRAVEL   |                       | RELATIVE PROPORTIONS OF FINES             |                       |
|---|-----------------------|---|-----------------------|
| Descriptive Term(s) of other constituents | Percent of Dry Weight | Descriptive Term(s) of other constituents | Percent of Dry Weight |
| Trace                                     | <15                   | Trace                                     | <5                    |
| With                                      | 15-29                 | With                                      | 5-12                  |
| Modifier                                  | >30                   | Modifier                                  | >12                   |

| GRAIN SIZE TERMINOLOGY    |                                      | PLASTICITY DESCRIPTION |                  |
|---------------------------|--------------------------------------|------------------------|------------------|
| Major Component of Sample | Particle Size                        | Term                   | Plasticity Index |
| Boulders                  | Over 12 in. (300 mm)                 | Non-plastic            | 0                |
| Cobbles                   | 12 in. to 3 in. (300mm to 75mm)      | Low                    | 1 - 10           |
| Gravel                    | 3 in. to #4 sieve (75mm to 4.75 mm)  | Medium                 | 11 - 30          |
| Sand                      | #4 to #200 sieve (4.75mm to 0.075mm) | High                   | > 30             |
| Silt or Clay              | Passing #200 sieve (0.075mm)         |                        |                  |

| Criteria for Assigning Group Symbols and Group Names Using Laboratory Tests <sup>A</sup> |   |  |   | Soil Classification |                                   |                                    |
|--|---|--|---|---------------------|-----------------------------------|------------------------------------|
|  |   |  |   | Group Symbol        | Group Name <sup>B</sup>           |                                    |
| <b>Coarse-Grained Soils:</b><br>More than 50% retained on No. 200 sieve                  | <b>Gravels:</b><br>More than 50% of coarse fraction retained on No. 4 sieve | <b>Clean Gravels:</b><br>Less than 5% fines <sup>C</sup>       | $Cu \geq 4$ and $1 \leq Cc \leq 3$ <sup>E</sup>       | GW                  | Well-graded gravel <sup>F</sup>   |                                    |
|  |   |  | $Cu < 4$ and/or $[Cc < 1$ or $Cc > 3.0]$ <sup>E</sup> | GP                  | Poorly graded gravel <sup>F</sup> |                                    |
|  |   | <b>Gravels with Fines:</b><br>More than 12% fines <sup>C</sup> | Fines classify as ML or MH                            | GM                  | Silty gravel <sup>F, G, H</sup>   |                                    |
|  |   |  | Fines classify as CL or CH                            | GC                  | Clayey gravel <sup>F, G, H</sup>  |                                    |
|  | <b>Sands:</b><br>50% or more of coarse fraction passes No. 4 sieve          | <b>Clean Sands:</b><br>Less than 5% fines <sup>D</sup>         | $Cu \geq 6$ and $1 \leq Cc \leq 3$ <sup>E</sup>       | SW                  | Well-graded sand <sup>I</sup>     |                                    |
|  |   |  | $Cu < 6$ and/or $[Cc < 1$ or $Cc > 3.0]$ <sup>E</sup> | SP                  | Poorly graded sand <sup>I</sup>   |                                    |
|  |   | <b>Sands with Fines:</b><br>More than 12% fines <sup>D</sup>   | Fines classify as ML or MH                            | SM                  | Silty sand <sup>G, H, I</sup>     |                                    |
|  |   |  | Fines classify as CL or CH                            | SC                  | Clayey sand <sup>G, H, I</sup>    |                                    |
| <b>Fine-Grained Soils:</b><br>50% or more passes the No. 200 sieve                       | <b>Silts and Clays:</b><br>Liquid limit less than 50                        | <b>Inorganic:</b>  | $PI > 7$ and plots on or above "A" line               | CL                  | Lean clay <sup>K, L, M</sup>      |                                    |
|  |   |  | $PI < 4$ or plots below "A" line <sup>J</sup>         | ML                  | Silt <sup>K, L, M</sup>           |                                    |
|  |   | <b>Organic:</b>  | Liquid limit - oven dried                             | < 0.75              | OL                                | Organic clay <sup>K, L, M, N</sup> |
|  |   |  | Liquid limit - not dried                              |                     |                                   | Organic silt <sup>K, L, M, O</sup> |
|  | <b>Silts and Clays:</b><br>Liquid limit 50 or more                          | <b>Inorganic:</b>  | $PI$ plots on or above "A" line                       | CH                  | Fat clay <sup>K, L, M</sup>       |                                    |
|  |   |  | $PI$ plots below "A" line                             | MH                  | Elastic Silt <sup>K, L, M</sup>   |                                    |
|  |   | <b>Organic:</b>  | Liquid limit - oven dried                             | < 0.75              | OH                                | Organic clay <sup>K, L, M, P</sup> |
|  |   |  | Liquid limit - not dried                              |                     |                                   | Organic silt <sup>K, L, M, Q</sup> |
|  | <b>Highly organic soils:</b>  | Primarily organic matter, dark in color, and organic odor      |   |                     | PT                                | Peat                               |

<sup>A</sup> Based on the material passing the 3-inch (75-mm) sieve.

<sup>B</sup> If field sample contained cobbles or boulders, or both, add "with cobbles or boulders, or both" to group name.

<sup>C</sup> Gravels with 5 to 12% fines require dual symbols: GW-GM well-graded gravel with silt, GW-GC well-graded gravel with clay, GP-GM poorly graded gravel with silt, GP-GC poorly graded gravel with clay.

<sup>D</sup> Sands with 5 to 12% fines require dual symbols: SW-SM well-graded sand with silt, SW-SC well-graded sand with clay, SP-SM poorly graded sand with silt, SP-SC poorly graded sand with clay.

<sup>E</sup>  $Cu = D_{60}/D_{10}$      $Cc = \frac{(D_{30})^2}{D_{10} \times D_{60}}$

<sup>F</sup> If soil contains  $\geq 15\%$  sand, add "with sand" to group name.

<sup>G</sup> If fines classify as CL-ML, use dual symbol GC-GM, or SC-SM.

<sup>H</sup> If fines are organic, add "with organic fines" to group name.

<sup>I</sup> If soil contains  $\geq 15\%$  gravel, add "with gravel" to group name.

<sup>J</sup> If Atterberg limits plot in shaded area, soil is a CL-ML, silty clay.

<sup>K</sup> If soil contains 15 to 29% plus No. 200, add "with sand" or "with gravel," whichever is predominant.

<sup>L</sup> If soil contains  $\geq 30\%$  plus No. 200 predominantly sand, add "sandy" to group name.

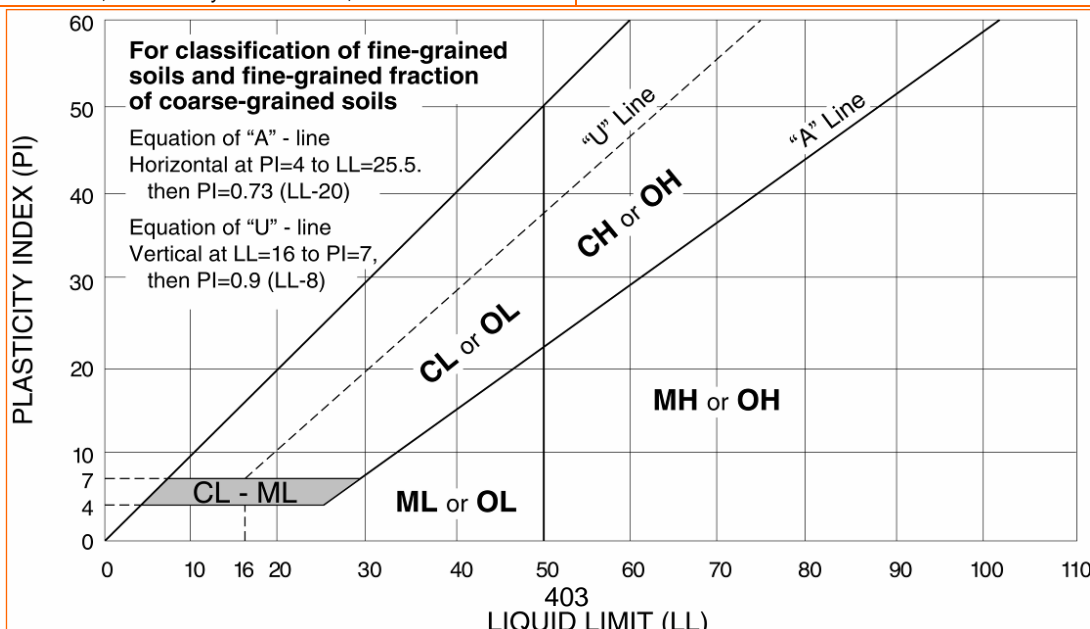
<sup>M</sup> If soil contains  $\geq 30\%$  plus No. 200, predominantly gravel, add "gravelly" to group name.

<sup>N</sup>  $PI \geq 4$  and plots on or above "A" line.

<sup>O</sup>  $PI < 4$  or plots below "A" line.

<sup>P</sup>  $PI$  plots on or above "A" line.

<sup>Q</sup>  $PI$  plots below "A" line.





# Geotechnical Engineering Report

**Rowe High School Softball & Baseball Fields Artificial Turf**

**McAllen, Texas**

November 8, 2021

Terracon Project No. 88215140

**Prepared for:**

McAllen Independent School District

McAllen, Texas

**Prepared by:**

Terracon Consultants, Inc.

Pharr, Texas



November 8, 2021



McAllen Independent School District  
4309 Warrior Dr  
McAllen, Texas 78501-3396

Attn: Ms. Melissa Ortiz  
P: (956) 632-3200  
E: melissa.ortiz@mcallenisd.net

Re: Geotechnical Engineering Report  
Rowe High School Softball & Baseball Fields Artificial Turf  
2101 N Ware Rd.  
McAllen, Texas  
Terracon Project No. 88215140

Dear Ms. Ortiz,

We have completed the Geotechnical Engineering services for the above referenced project. This study was performed in general accordance with Terracon Proposal No. P88215117 dated August 9, 2021. This report presents the findings of the subsurface exploration and provides geotechnical recommendations concerning earthwork for the proposed project.

We appreciate the opportunity to be of service to you on this project. If you have any questions concerning this report or if we may be of further service, please contact us.

Sincerely,

**Terracon Consultants, Inc.**

(Texas Firm Registration No.: F-3272)

S. Mustapha Rahmaninezhad, Ph.D.  
Senior Engineer



11/8/21

Alfonso A. Soto, P.E., D.GE  
Principal



## REPORT TOPICS

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**Note:** This report was originally delivered in a web-based format. **Orange Bold** text in the report indicates a referenced section heading. The PDF version also includes hyperlinks which direct the reader to that section and clicking on the **GeoReport** logo will bring you back to this page. For more interactive features, please view your project online at [client.terracon.com](http://client.terracon.com).

## ATTACHMENTS

**EXPLORATION AND TESTING PROCEDURES**  
**SITE LOCATION AND EXPLORATION PLANS**  
**EXPLORATION RESULTS**  
**SUPPORTING INFORMATION**

**Note:** Refer to each individual Attachment for a listing of contents.

**Geotechnical Engineering Report**  
**Rowe High School Softball & Baseball Fields Artificial Turf**  
**2101 N Ware Rd.**  
**McAllen, Texas**  
**Terracon Project No. 88215140**  
**November 8, 2021**

**INTRODUCTION**

This report presents the results of our subsurface exploration and geotechnical engineering services performed for the proposed Rowe High School Softball & Baseball Fields Artificial Turf located at 2101 N Ware Rd. in McAllen, Texas. The purpose of these services is to provide information and geotechnical engineering recommendations relative to:

- Subsurface soil conditions
- Groundwater conditions
- Site preparation and earthwork
- Turf design guidelines

The geotechnical engineering Scope of Services for this project included the advancement of 7 test borings to depths of 10 feet below existing site grades.

Maps showing the site and boring locations are presented in the **Site Location** and **Exploration Plan** sections, respectively. The results of the laboratory testing performed on soil samples obtained from the site during the field exploration are included on the boring logs in the **Exploration Results** section.

**SITE CONDITIONS**

The following description of site conditions is derived from our site visit in association with the field exploration and our review of publicly available geologic and topographic maps.

| Item                         | Description   |
|------------------------------|---|
| <b>Parcel Information</b>    | The project site is located at 2101 N Ware Rd. in McAllen, Texas.<br>Baseball Field: Latitude/Longitude: 26.227368° N, 98.264155° W.<br>Softball Field: Latitude/Longitude: 26.226440° N, 98.264425° W.<br>See <b>Site Location</b> |
| <b>Existing Improvements</b> | Existing softball and baseball fields.  |
| <b>Current Ground Cover</b>  | Planted grass.  |
| <b>Existing Topography</b>   | Relatively flat and level.  |

| Item           | Description  |
|----------------|--|
| <b>Geology</b> | Based on the Geologic Atlas of Texas, McAllen – Brownsville prepared by The University of Texas, the site is located on the Beaumont Formation of the Pleistocene Period of the Quaternary Age. The soils are mostly composed of clay, silt, sand, and gravel and include mainly stream channel, point bar, natural levee and backswamp deposits. Concretions and massive accumulations of calcium carbonate (caliche) and concretions of iron oxide and iron-manganese oxides can be found in the zone of weathering. In particular, the site is located in areas that are dominantly clay and mud of low permeability, high water-holding capacity, high compressibility, high to very high shrink-swell potential, poor drainage, level to depressed relief, low shear strength and high plasticity. Geologic units include interdistributary muds, abandoned channel-fill muds, and fluvial overbank muds. |

## PROJECT DESCRIPTION

| Item                       | Description   |
|----------------------------|---|
| <b>Project Description</b> | The project consists of upgrading the baseball and softball fields to synthetic turf. |

## GEOTECHNICAL CHARACTERIZATION

We have developed a general characterization of the subsurface conditions based upon our review of the subsurface exploration, laboratory data, geologic setting and our understanding of the project. This characterization, termed GeoModel, forms the basis of our geotechnical calculations and evaluation of site preparation and foundation options. Conditions encountered at each exploration point are indicated on the individual logs. The individual logs and the GeoModel can be found in the **Exploration Results** section of this report.

As part of our analyses, we identified the following model layers within the subsurface profile. For a more detailed view of the model layer depths at each boring location, refer to the GeoModel.

| Model Layer | Layer Name  | General Description   |
|-------------|-------------|---|
| 1           | <b>CLAY</b> | Lean clay, Sandy lean clay, Lean clay with sand (CL), and Fat Clay (CH)<br>Soft to very stiff |

## **Groundwater Conditions**

The boreholes were drilled to their termination depths (10 feet) using dry drilling techniques to aid in the observation of groundwater. Groundwater was not observed in the borings while drilling, or for the short duration that the borings were allowed to remain open. The boreholes can be found on the boring logs in **Exploration Results**.

Groundwater level fluctuations occur due to seasonal variations in the amount of rainfall, runoff and other factors not evident at the time the borings were performed. Therefore, groundwater levels during construction or at other times in the life of the structure may be higher or lower than the levels indicated on the boring logs. The possibility of groundwater level fluctuations should be considered when developing the design and construction plans for the project. The boreholes were backfilled with on-site soil cuttings after completion of the groundwater level observations.

## **GEOTECHNICAL OVERVIEW**

Final grading for the proposed fields was not available at the time of this report. However, we anticipate that the new surface will have a final grade elevation at or near existing grade. If this information changes, we should be contacted to review and revise our recommendation as appropriate.

The near surface soils could become unstable with typical earthwork and construction traffic, especially after precipitation events. The effective drainage should be completed early in the construction sequence and maintained after construction to avoid potential issues. If possible, the grading should be performed during the warmer and drier times of the year. If grading is performed during the winter months, an increased risk for possible undercutting and replacement of unstable subgrade will persist. Additional site preparation recommendations, including subgrade improvement and fill placement, are provided in the **Earthwork** section.

Ground movements at this site would most likely be related to vertical movements associated with expansive soils. These vertical soil movements can occur differentially and create cracks in the aggregate base. Additionally, base will weather with time becoming harder, less flexible (more brittle) and more subject to cracking. Water may enter cracks in the base which can lead to weakening of the material bonds and further degradation of the section. Some options can be implemented during construction of the new field to help reduce differential movements and cracking. Some of these options include the following:

- Reducing the Potential Vertical Rise (PVR) of the subgrade soils;
- Providing and maintaining positive drainage; and
- Providing subsurface drainage to collect and remove infiltrating water.

Even with the above options, some periodic maintenance should be expected.

The subsurface soils at this site generally exhibit a moderate expansion potential. Based on the information developed from our field and laboratory programs and on method TEX-124-E in the Texas Department of Transportation (TxDOT) Manual of Testing Procedures, we estimate that the subgrade soils at this site exhibit a Potential Vertical Rise (PVR) of about 1 inch in present condition.

## **EARTHWORK**

The construction areas should be stripped of any grass, topsoil, construction debris and other unsuitable materials. The following sections provide recommendations for use in the preparation of specifications for the work. Recommendations include critical quality criteria, as necessary, to render the site in the state considered in our geotechnical engineering evaluation for a new artificial turf.

### **Site Preparation**

Prior to placing fill, any buried structures and vegetation should be removed. Complete stripping of the topsoil should be performed in the field areas.

Once final subgrade elevations have been achieved, the exposed subgrade should be carefully proofrolled with a 15-ton pneumatic roller or a fully loaded dump truck to detect weak zones in the subgrade. Special care should be exercised when proofrolling the fill soils to detect soft/weak areas. Weak areas observed may be replaced with clean on-site soils or select fill. Proper site drainage should be maintained during construction so that ponding of surface runoff does not occur and causes construction delays and/or inhibit site access.

Subsequent to proofrolling, and just prior to placement of fill, the exposed subgrade within the construction area should be evaluated for moisture and density. If the moisture, density, and/or the requirements do not meet project requirements, the subgrade should be scarified to a minimum depth of 8 inches, moisture adjusted and compacted to at least 95 percent of the Standard Effort (ASTM D 698) maximum dry density.

### **Fill Material Types**

Engineered fill should consist of approved materials, free of organic material, debris and particles larger than about 2 inches. The maximum particle size criteria may be relaxed by the geotechnical engineer of record depending on construction techniques, material gradation, allowable lift thickness and observations during fill placement. Soils for use as engineered fill material should conform to the following specifications:

| Fill Type <sup>1</sup>                                | USCS Classification           | Acceptable Location for Placement  |
|---|-------------------------------|--|
| <b>Aggregate Base and Subbase Course</b> <sup>2</sup> | Varies                        | Can be used in the field under the synthetic turf surface.   |
| <b>Select Fill</b>                                    | CL and/or SC<br>(7 ≤ PI ≤ 20) | Must be used to construct the fill body and all grade adjustments within the field areas.  |
| <b>On-Site Soils</b>                                  | CL and CH                     | On-site soils may be suitable for use as fill within the project areas if they are free from organics, cohesive and have a Plasticity Index (PI) between 7 and 20. |
| <b>Flowable Fill</b> <sup>3</sup>                     | ---                           | Confined areas and backfill existing utility trenches.   |

1. Prior to any filling operations, samples of the proposed borrow and on-site materials should be obtained for laboratory moisture-density testing. The tests will provide a basis for evaluation of fill compaction by in-place density testing. A qualified soil technician should perform sufficient in-place density tests during the filling operations to evaluate that proper levels of compaction, including dry unit weight and moisture content, are being attained.
2. Crushed limestone and crushed concrete material should meet the requirements of 2014 TxDOT Item 247, Type A, or D, Grades 1-2 and/or 3 or turf manufacturer's specifications. The select fill materials should be free of organic material and debris and should not contain stones larger than 2 inches in the maximum dimension. The clayey gravel and caliche materials should meet the gradation requirements of Item 247, Type B, Grades 1-2 and/or 3 as specified in the 2014 TxDOT Standard Specifications Manual and a Plasticity Index between 7 and 20.
3. Excavatable flowable fill should have a 28-day strength between 80 and 200 psi and meet the requirements for 2014 TxDOT Item 401. Although usually costlier, flowable fill does not require placement in lifts or mechanical compaction.

## Fill Compaction Requirements

Structural and general fill should meet the following compaction requirements.

| Item   | Description   |
|--|---|
| <b>Fill Lift Thickness</b>                                     | The fill should be placed in loose lifts of about 8 inches, with compacted thickness not exceeding 6 inches.  |
| <b>Compaction Requirements (on-site soils and select fill)</b> | The on-site soils and select fill should be compacted to at least 95 percent of The Standard Effort (ASTM D698) maximum dry density within 2 percentage points of the optimum moisture content. |

## Wet Weather/Soft Subgrade Considerations

Construction operations may encounter difficulties due to the wet or soft surface soils becoming a general hindrance to equipment due to rutting and pumping of the soil surface, especially during and soon after periods of wet weather.



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Rowe High School Softball & Baseball Fields Artificial Turf ■ McAllen, Texas

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If the subgrade cannot be adequately compacted to minimum densities as described above, one of the following measures will be required:

- Removal and replacement with select fill,
- Chemical treatment of the soil to dry and increase the stability of the subgrade, or
- Drying by natural means if the schedule allows.

In our experience with similar soils in this area, chemical treatment is the most efficient and effective method to increase the supporting value of wet and weak subgrade. Terracon should be contacted for additional recommendations if chemical treatment of the soils is needed.

Prior to placing any fill, all surface vegetation, topsoil, possible fill material and any otherwise unsuitable materials should be removed from the construction areas. Wet or dry material should either be removed, or moisture conditioned and recompacted. After stripping and grubbing, the subgrade should be proof-rolled where possible to aid in locating loose or soft areas. Proof-rolling can be performed with a 15-ton roller or fully loaded dump truck. Soft, dry and low-density soil should be removed or compacted in place prior to placing fill.

### Grading and Drainage

Positive drainage should be provided during construction and maintained throughout the life of the development. Infiltration of water into utility trenches excavations should be prevented during construction. Backfill in utility trenches, should be well compacted and free of all construction debris to reduce the possibility of moisture infiltration.

Consideration should be given to extending drainage piping to day light at the face of curbs then empty onto the appropriate drainage.

Utility trenches are a common source of water infiltration and migration. All utility trenches that penetrate beneath the field should be effectively sealed to restrict water intrusion and flow through the trenches that could migrate below the new surface.

We recommend constructing an effective clay "trench plug" that extends at least 5 feet out from the face of the field perimeter. The plug material should consist of clay compacted at a water content at or above the soils optimum water content. The clay fill should be placed to surround the utility line and be compacted in accordance with recommendations in this report. In addition, the turf manufacturer drainage installation within the field area should be followed.

## **Earthwork Construction Considerations**

Shallow excavations for the proposed construction are anticipated to be accomplished with conventional construction equipment. Upon completion of filling and grading, care should be taken to maintain the subgrade water content prior to construction. Construction traffic over the completed subgrade should be avoided. The site should also be graded to prevent ponding of surface water on the prepared subgrade or in excavations. Water collecting over or adjacent to construction areas should be removed. If the subgrade freezes, desiccates, saturates, or is disturbed, the affected material should be removed, or the materials should be scarified, moisture conditioned, and recompacted prior to artificial turf construction.

The groundwater table could affect overexcavation efforts, especially for over-excavation and replacement of lower strength soils. A temporary dewatering system consisting of sumps with pumps could be necessary to achieve the recommended depth of over-excavation.

As a minimum, excavations should be performed in accordance with OSHA 29 CFR, Part 1926, Subpart P, "Excavations" and its appendices, and in accordance with any applicable local, and/or state regulations.

Construction site safety is the sole responsibility of the contractor who controls the means, methods, and sequencing of construction operations. Under no circumstances shall the information provided herein be interpreted to mean Terracon is assuming responsibility for construction site safety, or the contractor's activities; such responsibility shall neither be implied nor inferred.

## **Construction Observation and Testing**

The earthwork efforts should be monitored under the direction of the Geotechnical Engineer. Monitoring should include documentation of adequate removal of vegetation and topsoil, proofrolling, and mitigation of areas delineated by the proofroll to require mitigation.

Each lift of compacted fill should be tested, evaluated, and reworked, as necessary, until approved by the Geotechnical Engineer prior to placement of additional lifts. Each lift of fill should be tested for density and water content at a frequency of at least one test for every 2,500 square feet of compacted fill in the field areas. One density and water content test should be performed for every 50 linear feet of compacted utility trench backfill.

In areas of foundation excavations, the bearing subgrade should be evaluated under the direction of the Geotechnical Engineer. If unanticipated conditions are encountered, the Geotechnical Engineer should prescribe mitigation options.

The essential parameters necessary for construction, the continuation of the Geotechnical Engineer into the construction phase of the project provides the continuity to maintain the Geotechnical Engineer's evaluation of subsurface conditions, including assessing variations and associated design changes.

## **TURF**

The synthetic field surfaces (turf) are constructed of an all-weather surface supported by a granular section, which consists of synthetic turf, aggregate base, aggregate subbase, geotextile membrane, a properly moisture conditioned and compacted subgrade and a drainage system. The artificial turfs, especially those supported by expansive clay soils may be subject to movement and cracking, thus requiring periodic maintenance.

### **General Turf Comments**

A critical aspect of turf performance is site preparation. Synthetic field surface recommendations, noted in this section, must be applied to the site, which has been prepared as recommended in the **Site Preparation** section.

We recommend the moisture content and density of the top 6 inches of the subgrade be evaluated and the subgrade be proofrolled within two days prior to commencement of actual aggregate subbase placement operations. Areas not in compliance with the required ranges of moisture or density should be moisture conditioned and re-compacted.

Particular attention should be paid to high traffic areas that were rutted and disturbed earlier and to areas where backfilled trenches are located. Areas where unsuitable conditions are located should be repaired by removing and replacing the materials with properly compacted fills.

If a significant precipitation event occurs after the evaluation or if the surface becomes disturbed, the subgrade should be reviewed by qualified personnel immediately prior to construction. The subgrade should be in its finished form at the time of the final review.

Based on the subsurface conditions, we anticipate that the subgrade will generally consist of the on-site soils. The top 6 inches of the finished subgrade soils directly beneath the aggregate subbase may be chemically treated. Chemical treatment will increase the supporting value of the subgrade and decrease the effect of moisture on subgrade soils.

The proposed Synthetic Turf may consist of the following thickness section.

| Component  | Thickness                         |
|--|-----------------------------------|
| Turf Surface   | As determined by the manufacturer |
| Finishing Top Stone (Aggregate Base)   |                                   |
| Aggregate Subbase  |                                   |
| Geotextile Membrane  |                                   |
| Moisture Conditioned or Treated Subgrade <sup>1</sup>  | Minimum 6 inches                  |
| <p>1. Prepared subgrade as recommended in the <b>Earthwork</b> and <b>Turf</b> sections of this report</p> |                                   |

Proper perimeter drainage is very important and should be provided so infiltration of surface water from surrounding areas is minimized.

We recommend constructing a concrete curb/wall around the perimeter of the field. The structure will help to isolate the near surface soils beneath the turf section from moisture variations. The curbs should extend through the base at least 24 inches below the aggregate base material. The inside face of each curb should be lined with a 20-mil polypropylene membrane. This will help reduce migration of subsurface water into the aggregate base course from adjacent areas. A crack sealant compatible to both asphalt and concrete should be provided at all concrete-asphalt interfaces.

### **Section Materials**

Aggregate Base and Subbase Material: Crushed limestone and crushed concrete material should meet the requirements of 2014 TxDOT Item 247, Type A, or D, Grades 1-2 and/or 3 or turf manufacturer’s specifications.

As an alternate to the Type A base, treated “caliche” material meeting the requirements of 2014 TxDOT Standard Specification Manual Item 247, Type B, Grade 1-2 and/or 3 may be used.

The granular base should be compacted to at least 95 percent of the maximum dry density determined in accordance with the modified moisture-density relationship (ASTM D 1557) at moisture content within 2 percentage points of the optimum moisture content.

Treated Subgrade: The subgrade soils should be treated with lime (modifier) in accordance with 2014 TxDOT Standard Specifications Item 260. The recommended percentage of modifier is for estimating and planning. The actual quantity of modifier required should be determined at the time of construction by laboratory tests on bulk samples of the subgrade soils.

We anticipate that the on-site surficial soils be treated with about 4 percent of modifier. This percentage is given as application by dry weight and is typically equivalent to about 18 pounds of modifier per square yard per 6-inch depth. The subgrade should be compacted to a minimum of 95 percent of the Standard Effort (ASTM D 698) maximum dry density within 2 percentage points of the optimum moisture content. Preferably, traffic, should be kept off the treated subgrade for about 3 to 5 days to facilitate curing of the soil - chemical mixture; in addition, the subgrade is not suitable for heavy construction traffic prior to paving.

Post-construction subgrade movements and some cracking of the pavements are not uncommon for subgrade conditions such as those observed at this site. Although chemical treatment of the subgrade will help to reduce such movement/cracking, this movement/cracking cannot be economically eliminated.

Moisture Conditioned Subgrade: The subgrade should be scarified to a depth of 6 inches and moisture conditioned within 2 percentage points of the optimum moisture content. The subgrade should then be compacted to at least 95 percent of the maximum dry density determined in accordance with ASTM D 698. This should result in a compacted, moisture conditioned layer about 8 inches thick.

Turf Surface, Finishing Top Stone, Aggregate Subbase and Geotextile: These materials should be in accordance with the criteria provided by the manufacturer.

## **Construction Design Considerations**

Turf performance is affected by its surroundings. In addition to providing preventive maintenance, the civil engineer should consider the following recommendations in the design:

- The subgrade and the turf surface should be sloped to promote proper surface drainage;
- Install drainage system surrounding areas anticipated for frequent wetting;
- Place curb, gutter and/or sidewalk directly on low permeability subgrade soils rather than on unbound granular base course materials.

## **Field Drainage**

Turf surface should be sloped to provide rapid drainage of surface water. Water allowed to pond on or adjacent to the field could saturate the subgrade and contribute to premature turf deterioration. In addition, the subgrade should be graded to provide positive drainage within the granular base section. Appropriate sub-drainage or connection to a suitable daylight outlet should be provided to remove water from the granular subbase.

## **Field Maintenance**

The turf sections provided in this report represent minimum recommended thicknesses and, as such, periodic maintenance should be anticipated. Therefore, preventive maintenance should be planned and provided for through an on-going turf management program.

Maintenance activities are intended to slow the rate of turf deterioration and to preserve the investment. Maintenance consists of both localized maintenance (e.g. crack and joint sealing and patching) and global maintenance (e.g. surface sealing). Preventive maintenance is usually the priority when implementing a turf maintenance program. Additional engineering observation is recommended to determine the type and extent of a cost-effective program. Even with periodic maintenance, some movements and related cracking may still occur, and repairs may be required.

## **GENERAL COMMENTS**

Our analysis and opinions are based upon our understanding of the project, the geotechnical conditions in the area, and the data obtained from our site exploration. Natural variations will occur between exploration point locations or due to the modifying effects of construction or weather. The nature and extent of such variations may not become evident until during or after construction. Terracon should be retained as the Geotechnical Engineer, where noted in this report, to provide observation and testing services during pertinent construction phases. If variations appear, we can provide further evaluation and supplemental recommendations. If variations are noted in the absence of our observation and testing services on-site, we should be immediately notified so that we can provide evaluation and supplemental recommendations.

Our Scope of Services does not include either specifically or by implication any environmental or biological (e.g., mold, fungi, bacteria) assessment of the site or identification or prevention of pollutants, hazardous materials or conditions. If the owner is concerned about the potential for such contamination or pollution, other studies should be undertaken.

Our services and any correspondence or collaboration through this system are intended for the sole benefit and exclusive use of our client for specific application to the project discussed and are accomplished in accordance with generally accepted geotechnical engineering practices with no third-party beneficiaries intended. Any third-party access to services or correspondence is solely for information purposes to support the services provided by Terracon to our client. Reliance upon the services and any work product is limited to our client, and is not intended for third parties. Any use or reliance of the provided information by third parties is done solely at their own risk. No warranties, either express or implied, are intended or made.

Site characteristics as provided are for design purposes and not to estimate excavation cost. Any use of our report in that regard is done at the sole risk of the excavating cost estimator as there



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may be variations on the site that are not apparent in the data that could significantly impact excavation cost. Any parties charged with estimating excavation costs should seek their own site characterization for specific purposes to obtain the specific level of detail necessary for costing. Site safety, and cost estimating including, excavation support, and dewatering requirements/design are the responsibility of others. If changes in the nature, design, or location of the project are planned, our conclusions and recommendations shall not be considered valid unless we review the changes and either verify or modify our conclusions in writing.

## ATTACHMENTS

## EXPLORATION AND TESTING PROCEDURES

### Field Exploration

| Number of Borings | Boring Depth (feet) <sup>1</sup> | Location                     |
|-------------------|----------------------------------|------------------------------|
| 7                 | 10                               | Softball and Baseball Fields |

1. Below ground surface

**Boring Layout and Elevations:** Terracon personnel provided the boring layout. Coordinates were obtained with a handheld GPS unit (estimated horizontal accuracy of about ±10 feet).

**Subsurface Exploration Procedures:** We advanced the soil borings with a truck-mounted drill rig using continuous flight augers (solid stem and/or hollow stem as necessary depending on soil conditions). Three samples were obtained in the upper 5 feet of the borings. Soil sampling was performed using thin-wall tube and/or split-barrel sampling procedures. We observed and recorded groundwater levels during drilling and sampling. For safety purposes, the borings were backfilled with auger cuttings after their completion.

The sampling depths, penetration distances, and other sampling information were recorded on the field boring logs. The samples were placed in appropriate containers and taken to our soil laboratory for testing and classification by a geotechnical engineer. Our exploration team prepared field boring logs as part of the drilling operations. The field logs included visual classifications of the materials encountered during drilling and our interpretation of the subsurface conditions between samples. Final boring logs were prepared from the field log. The final boring logs represent the geotechnical engineer's interpretation of the field logs and include modifications based on observations and tests of the samples in our laboratory.

### Laboratory Testing

The project engineer reviewed the field data and assigned various laboratory tests to better understand the engineering properties of the various soil strata as necessary for this project.

- ASTM D2216 Standard Test Methods for Laboratory Determination of Water (Moisture) Content of Soil and Rock by Mass
- ASTM D4318 Standard Test Methods for Liquid Limit, Plastic Limit, and Plasticity Index of Soils
- ASTM D422 Standard Test Method for Particle-Size Analysis of Soils

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The laboratory testing program often included examination of soil samples by an engineer. Based on the material's texture and plasticity, we described and classified the soil samples in accordance with the Unified Soil Classification System (USCS).

## **SITE LOCATION AND EXPLORATION PLANS**

### **Contents:**

Site Location Plan

Exploration Plan



**SITE LOCATION**

Rowe High School Softball & Baseball Fields Artificial Turf ■ McAllen, Texas  
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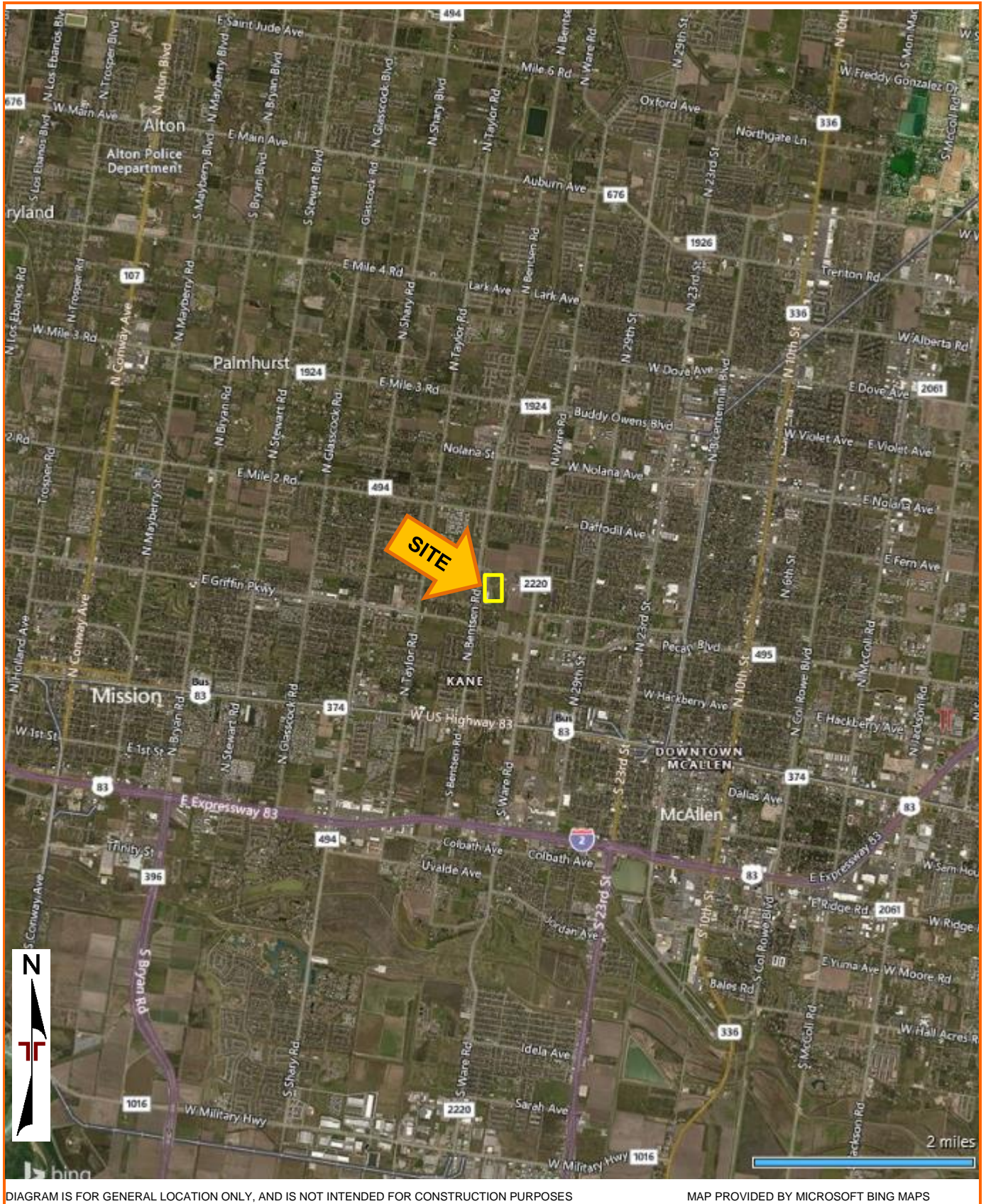


DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

MAP PROVIDED BY MICROSOFT BING MAPS



**EXPLORATION PLAN**

Rowe High School Softball & Baseball Fields Artificial Turf ■ McAllen, Texas  
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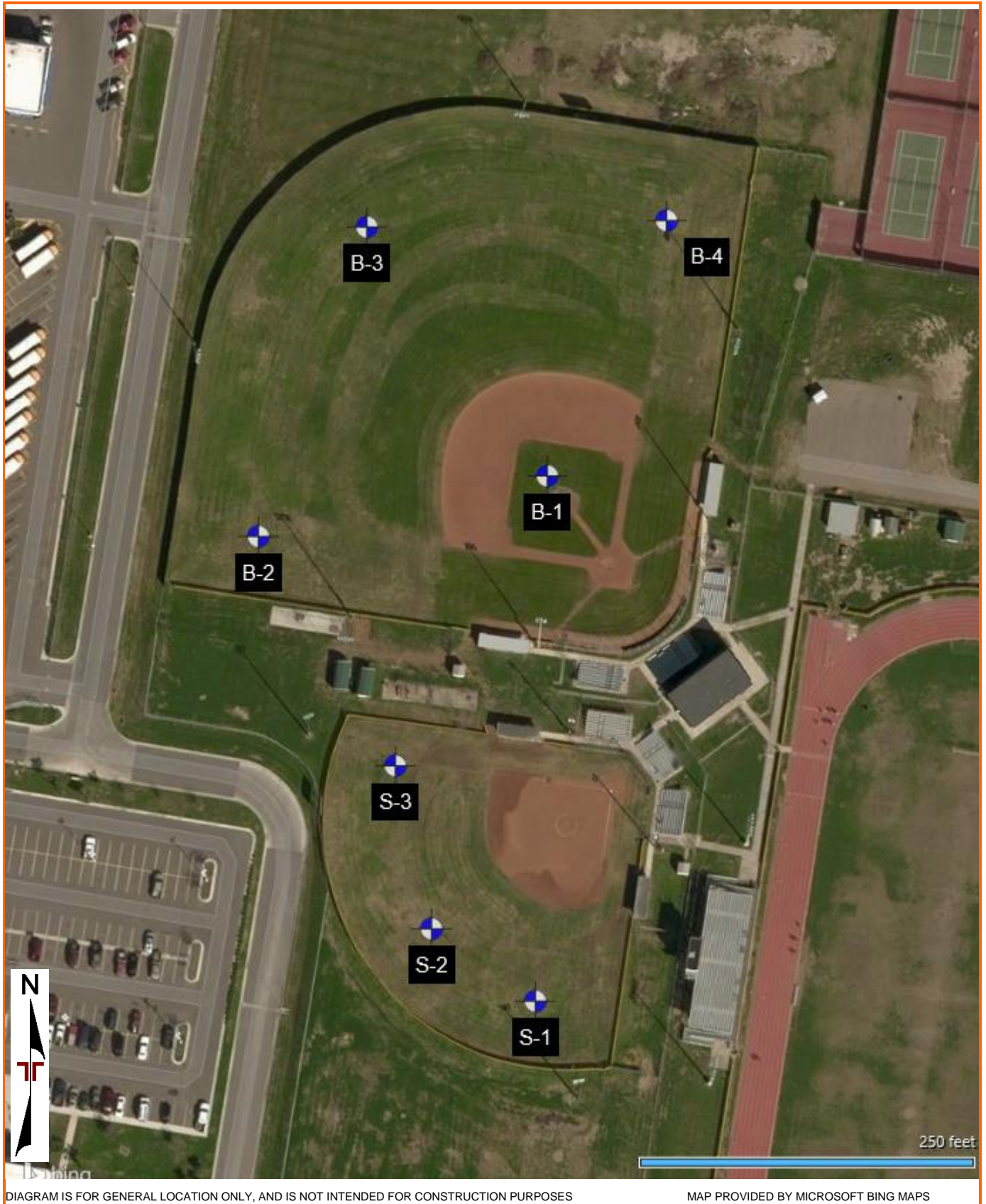


DIAGRAM IS FOR GENERAL LOCATION ONLY, AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES

MAP PROVIDED BY MICROSOFT BING MAPS

## EXPLORATION RESULTS

**Contents:**  
Boring Logs  
GeoModel

# BORING LOG NO. B-1

**PROJECT:** Rowe HS Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2101 N Ware Rd  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a>  | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|------------------|---------------|
|             |             | DEPTH  |             |                          |             |                    |                   | LL-PL-PI         |               |
| 1           |             | <p><b>SANDY LEAN CLAY (CL)</b>, dark brown to tannish-brown, medium stiff to stiff</p> <p>- soft at 2½ feet</p> <p>- with sand at 6½ feet</p> <p>- very stiff fat clay (CH) at 8½ feet</p> | 10.0        |                          |             |                    |                   |                  |               |
|             |             | <b>Boring Terminated at 10 Feet</b>  | 10          |                          |             |                    |                   |                  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

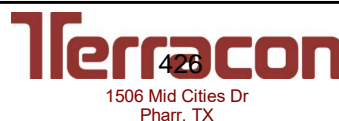
Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered



Boring Started: 10-27-2021

Boring Completed: 10-27-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215140

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215140 ROWE HS BASEBALL\_GPJ\_TERRACON\_DATATEMPLATE.GDT 11/4/21

# BORING LOG NO. B-2

**PROJECT:** Rowe HS Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2101 N Ware Rd  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a>   | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS | PERCENT FINES |
|-------------|-------------|---|-------------|--------------------------|-------------|--------------------|-------------------|------------------|---------------|
|             |             | DEPTH   |             |                          |             |                    |                   | LL-PL-PI         |               |
| 1           |             | <p><b>SANDY LEAN CLAY (CL)</b>, dark brown to tannish-brown, medium stiff to stiff</p> <p>- soft at 2½ feet</p> <p>- very stiff below 6½ feet</p> <p>- with sand at 8½ feet</p> | 10.0        |                          |             |                    |                   |                  |               |
|             |             | <b>Boring Terminated at 10 Feet</b>   | 10          |                          |             |                    |                   |                  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**  
*Groundwater not encountered*



Cave-in

Notes:

Boring Started: 10-27-2021

Boring Completed: 10-27-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215140

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215140 ROWE HS BASEBALL\_GPJ\_TERRACON\_DATATEMPLATE.GDT 11/4/21

# BORING LOG NO. B-3

**PROJECT:** Rowe HS Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2101 N Ware Rd  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2279° Longitude: -98.2646°   | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS |  | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|------------------|--|---------------|
|             |             |  |             |                          |             |                    |                   | LL-PL-PI         |  |               |
|             |             | DEPTH  |             |                          |             |                    |                   |                  |  |               |
| 1           |             | <p><b>SANDY LEAN CLAY (CL)</b>, dark brown to tannish-brown, medium stiff to stiff</p> <p style="text-align: center;">- very stiff, with sand at 8½ feet</p> | 5           |                          | X           | 4-4-2<br>N=6       | 7.1               | 34-14-20         |  |               |
|             |             |  |             |                          | X           | 3-1-5<br>N=6       | 16.0              |                  |  | 63            |
|             |             |  |             |                          | X           | 2-2-3<br>N=5       | 17.6              |                  |  |               |
|             |             |  |             |                          | X           | 3-4-6<br>N=10      | 16.9              | 41-18-23         |  |               |
|             |             |  |             |                          | X           | 5-8-11<br>N=19     | 17.2              |                  |  | 88            |
|             |             | 10.0   |             |                          |             |                    |                   |                  |  |               |
|             |             | <b>Boring Terminated at 10 Feet</b>  |             |                          |             |                    |                   |                  |  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered



1506 Mid Cities Dr  
Pharr, TX

Boring Started: 10-27-2021

Boring Completed: 10-27-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215140

Cave-in

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215140 ROWE HS BASEBALL\_GPJ\_TERRACON\_DATATEMPLATE.GDT 11/4/21

# BORING LOG NO. B-4

**PROJECT:** Rowe HS Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2101 N Ware Rd  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2279° Longitude: -98.2639°  | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS |  | PERCENT FINES |
|-------------|-------------|---|-------------|--------------------------|-------------|--------------------|-------------------|------------------|--|---------------|
|             |             |   |             |                          |             |                    |                   | LL-PL-PI         |  |               |
| 1           |             | <p><b>SANDY LEAN CLAY (CL)</b>, dark brown to tannish-brown, medium stiff to stiff</p> <p style="text-align: center;">- very stiff at below 6½ feet</p> | 10.0        |                          | X           | 4-4-4<br>N=8       | 8.8               | 34-13-21         |  |               |
|             |             |   | 5           |                          | X           | 3-2-2<br>N=4       | 13.4              |                  |  | 63            |
|             |             |   | 5           |                          | X           | 2-2-3<br>N=5       | 18.0              |                  |  |               |
|             |             |   |             |                          | X           | 4-7-9<br>N=16      | 17.8              | 45-23-22         |  |               |
|             |             |   |             |                          | X           | 4-5-7<br>N=12      | 19.1              |                  |  |               |
|             |             | <b>Boring Terminated at 10 Feet</b>   | 10          |                          |             |                    |                   |                  |  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

See [Supporting Information](#) for explanation of symbols and abbreviations.

Notes:

**WATER LEVEL OBSERVATIONS**  
*Groundwater not encountered*



Boring Started: 10-27-2021

Boring Completed: 10-27-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215140

Cave-in

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215140 ROWE HS BASEBALL\_GPJ\_TERRACON\_DATATEMPLATE.GDT 11/4/21



# BORING LOG NO. S-1

**PROJECT:** Rowe HS Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2101 N Ware Rd  
McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a>                                    | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|------------------|---------------|
|             |             | DEPTH  |             |                          |             |                    |                   | LL-PL-PI         |               |
|             |             | Latitude: 26.2263° Longitude: -98.2642°  |             |                          |             |                    |                   |                  |               |
| 1           |             | <b>SANDY LEAN CLAY (CL)</b> , dark brown to tannish-brown, stiff to medium stiff | 5           |                          | X           | 4-6-4<br>N=10      | 8.4               | 37-16-21         |               |
|             |             |  |             |                          |             | 2-2-3<br>N=5       | 12.5              |                  | 66            |
|             |             |  |             |                          |             | 2-3-4<br>N=7       | 17.2              |                  |               |
|             |             | <b>FAT CLAY (CH)</b> , with sand, tannish-brown, very stiff to stiff             |             |                          | X           | 5-9-10<br>N=19     | 18.3              | 58-21-37         |               |
|             |             |  |             |                          | X           | 4-6-8<br>N=14      | 19.6              |                  | 79            |
|             |             | <b>Boring Terminated at 10 Feet</b>  | 10          |                          |             |                    |                   |                  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

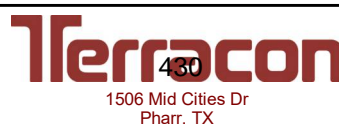
Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**  
*Groundwater not encountered*



Cave-in

Notes:

Boring Started: 10-27-2021

Boring Completed: 10-27-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215140

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215140 ROWE HS BASEBALL\_GPJ\_TERRACON\_DATATEMPLATE.GDT 11/4/21

# BORING LOG NO. S-2

**PROJECT:** Rowe HS Baseball & Softball Fields Artificial Turf

**CLIENT:** McAllen Independent School District  
McAllen, TX

**SITE:** 2101 N Ware Rd  
McAllen, TX

| MODEL LAYER                         | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2264° Longitude: -98.2644° | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS |  | PERCENT FINES |
|-------------------------------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|------------------|--|---------------|
|                                     |             |  |             |                          |             |                    |                   | LL-PL-PI         |  |               |
|                                     | 1           | <b>LEAN CLAY (CL)</b> , with sand, dark brown to tannish-brown, medium stiff to stiff    |             |                          | X           | 6-6-5<br>N=11      | 9.6               | 31-13-18         |  |               |
|                                     |             |  |             |                          | X           | 3-3-2<br>N=5       | 12.9              |                  |  |               |
|                                     |             |  | 5           |                          | X           | 2-4-4<br>N=8       | 18.0              | 43-17-26         |  |               |
|                                     |             |  |             |                          | X           | 4-7-7<br>N=14      | 18.3              |                  |  | 79            |
|                                     |             | - very stiff at 8½ feet  |             |                          | X           | 5-9-11<br>N=20     | 16.8              |                  |  |               |
|                                     |             | 10.0   | 10          |                          |             |                    |                   |                  |  |               |
| <b>Boring Terminated at 10 Feet</b> |             |  |             |                          |             |                    |                   |                  |  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

Notes:

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Supporting Information](#) for explanation of symbols and abbreviations.

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered



461  
1506 Mid Cities Dr  
Pharr, TX

Boring Started: 10-27-2021

Boring Completed: 10-27-2021

Drill Rig: CME 55

Driller: SWD

Project No.: 88215140

Cave-in

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215140 ROWE HS BASEBALL\_GPJ\_TERRACON\_DATATEMPLATE.GDT 11/4/21

# BORING LOG NO. S-3

**PROJECT:** Rowe HS Baseball & Softball Fields Artificial Turf  
**SITE:** 2101 N Ware Rd  
 McAllen, TX

**CLIENT:** McAllen Independent School District  
 McAllen, TX

| MODEL LAYER | GRAPHIC LOG | LOCATION See <a href="#">Exploration Plan</a><br>Latitude: 26.2268° Longitude: -98.2645° | DEPTH (Ft.) | WATER LEVEL OBSERVATIONS | SAMPLE TYPE | FIELD TEST RESULTS | WATER CONTENT (%) | ATTERBERG LIMITS |  | PERCENT FINES |
|-------------|-------------|--|-------------|--------------------------|-------------|--------------------|-------------------|------------------|--|---------------|
|             |             |  |             |                          |             |                    |                   | LL-PL-PI         |  |               |
|             |             | <b>LEAN CLAY (CL)</b> , with sand, dark brown to tannish-brown, medium stiff to stiff    |             |                          |             |                    |                   |                  |  |               |
| 1           |             | - soft at 2½ feet  |             |                          | X           | 5-6-4<br>N=10      | 9.8               | 36-14-22         |  |               |
|             |             |  |             |                          | X           | 3-2-1<br>N=3       | 11.4              |                  |  | 63            |
|             |             |  | 5           |                          | X           | 2-3-3<br>N=6       | 18.7              |                  |  |               |
|             |             |  |             |                          | X           | 3-6-6<br>N=12      | 18.2              | 46-18-28         |  |               |
|             |             | - with sand at 8½ feet   |             |                          | X           | 4-5-6<br>N=11      | 20.2              |                  |  | 82            |
|             |             | 10.0<br><b>Boring Terminated at 10 Feet</b>  | 10          |                          |             |                    |                   |                  |  |               |

Stratification lines are approximate. In-situ, the transition may be gradual.

Hammer Type: Automatic

Advancement Method:  
Dry augered

Abandonment Method:  
Boring backfilled with auger cuttings upon completion.

See [Exploration and Testing Procedures](#) for a description of field and laboratory procedures used and additional data (If any).

See [Supporting Information](#) for explanation of symbols and abbreviations.

Notes:

**WATER LEVEL OBSERVATIONS**

Groundwater not encountered

Cave-in



Boring Started: 10-27-2021

Drill Rig: CME 55

Project No.: 88215140

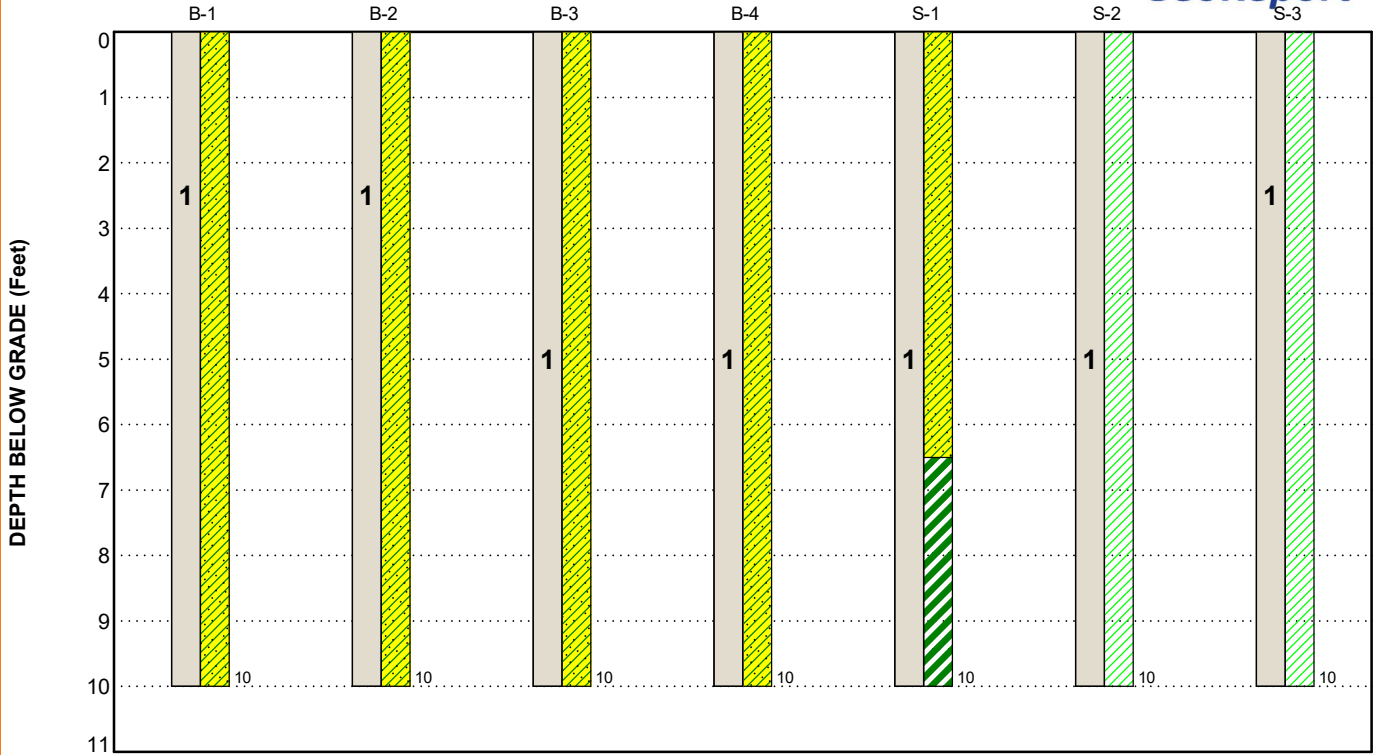
Boring Completed: 10-27-2021

Driller: SWD

THIS BORING LOG IS NOT VALID IF SEPARATED FROM ORIGINAL REPORT. GEO SMART LOG-NO WELL\_88215140 ROWE HS BASEBALL\_GPJ TERRACON\_DATATEMPLATE.GDT 11/4/21

**GEOMODEL**

Rowe HS Baseball & Softball Fields Artificial Turf ■ McAllen, TX  
 Terracon Project No. 88215140



This is not a cross section. This is intended to display the Geotechnical Model only. See individual logs for more detailed conditions.

| Model Layer | Layer Name | General Description   |
|-------------|------------|---|
| 1           | CLAY       | Lean clay, Sandy lean clay, Lean clay with sand (CL), and Fat clay (CH)<br>Soft to very stiff |

**LEGEND**

- Sandy Lean Clay
- Fat Clay
- Lean Clay

**NOTES:**

Layering shown on this figure has been developed by the geotechnical engineer for purposes of modeling the subsurface conditions as required for the subsequent geotechnical engineering for this project. Numbers adjacent to soil column indicate depth below ground surface.

## **SUPPORTING INFORMATION**






### **Contents:**

General Notes

Unified Soil Classification System

**GENERAL NOTES**

**DESCRIPTION OF SYMBOLS AND ABBREVIATIONS**

| SAMPLING   | WATER LEVEL  | FIELD TESTS  |  |
|--|--|--|--|
|  Shelby Tube<br> Split Spoon |  Water Initially Encountered<br> Water Level After a Specified Period of Time<br> Water Level After a Specified Period of Time<br><br>Water levels indicated on the soil boring logs are the levels measured in the borehole at the times indicated. Groundwater level variations will occur over time. In low permeability soils, accurate determination of groundwater levels is not possible with short term water level observations. | <b>N</b> Standard Penetration Test Resistance (Blows/Ft.)<br><br><b>(HP)</b> Hand Penetrometer<br><br><b>(T)</b> Torvane<br><br><b>(DCP)</b> Dynamic Cone Penetrometer<br><br><b>UC</b> Unconfined Compressive Strength<br><br><b>(PID)</b> Photo-Ionization Detector<br><br><b>(OVA)</b> Organic Vapor Analyzer |  |

**DESCRIPTIVE SOIL CLASSIFICATION**

Soil classification is based on the Unified Soil Classification System. Coarse Grained Soils have more than 50% of their dry weight retained on a #200 sieve; their principal descriptors are: boulders, cobbles, gravel or sand. Fine Grained Soils have less than 50% of their dry weight retained on a #200 sieve; they are principally described as clays if they are plastic, and silts if they are slightly plastic or non-plastic. Major constituents may be added as modifiers and minor constituents may be added according to the relative proportions based on grain size. In addition to gradation, coarse-grained soils are defined on the basis of their in-place relative density and fine-grained soils on the basis of their consistency.

**LOCATION AND ELEVATION NOTES**

Unless otherwise noted, Latitude and Longitude are approximately determined using a hand-held GPS device. The accuracy of such devices is variable. Surface elevation data annotated with +/- indicates that no actual topographical survey was conducted to confirm the surface elevation. Instead, the surface elevation was approximately determined from topographic maps of the area.

**STRENGTH TERMS**

| RELATIVE DENSITY OF COARSE-GRAINED SOILS<br>(More than 50% retained on No. 200 sieve.)<br>Density determined by Standard Penetration Resistance |   | CONSISTENCY OF FINE-GRAINED SOILS<br>(50% or more passing the No. 200 sieve.)<br>Consistency determined by laboratory shear strength testing, field visual-manual procedures or standard penetration resistance |   |   |
|---|---|---|---|---|
| Descriptive Term (Density)  | Standard Penetration or N-Value Blows/Ft. | Descriptive Term (Consistency)  | Unconfined Compressive Strength Qu, (tsf) | Standard Penetration or N-Value Blows/Ft. |
| Very Loose  | 0 - 3                                     | Very Soft   | less than 0.25                            | 0 - 1                                     |
| Loose   | 4 - 9                                     | Soft  | 0.25 to 0.50                              | 2 - 4                                     |
| Medium Dense  | 10 - 29                                   | Medium Stiff  | 0.50 to 1.00                              | 4 - 8                                     |
| Dense   | 30 - 50                                   | Stiff   | 1.00 to 2.00                              | 8 - 15                                    |
| Very Dense  | > 50                                      | Very Stiff  | 2.00 to 4.00                              | 15 - 30                                   |
|   |   | Hard  | > 4.00                                    | > 30                                      |

| RELATIVE PROPORTIONS OF SAND AND GRAVEL   |                       | RELATIVE PROPORTIONS OF FINES             |                       |
|---|-----------------------|---|-----------------------|
| Descriptive Term(s) of other constituents | Percent of Dry Weight | Descriptive Term(s) of other constituents | Percent of Dry Weight |
| Trace                                     | <15                   | Trace                                     | <5                    |
| With                                      | 15-29                 | With                                      | 5-12                  |
| Modifier                                  | >30                   | Modifier                                  | >12                   |

| GRAIN SIZE TERMINOLOGY    |                                      | PLASTICITY DESCRIPTION |                  |
|---------------------------|--------------------------------------|------------------------|------------------|
| Major Component of Sample | Particle Size                        | Term                   | Plasticity Index |
| Boulders                  | Over 12 in. (300 mm)                 | Non-plastic            | 0                |
| Cobbles                   | 12 in. to 3 in. (300mm to 75mm)      | Low                    | 1 - 10           |
| Gravel                    | 3 in. to #4 sieve (75mm to 4.75 mm)  | Medium                 | 11 - 30          |
| Sand                      | #4 to #200 sieve (4.75mm to 0.075mm) | High                   | > 30             |
| Silt or Clay              | Passing #200 sieve (0.075mm)         |                        |                  |



| Criteria for Assigning Group Symbols and Group Names Using Laboratory Tests <sup>A</sup> |   |  |  | Soil Classification |                                   |                                    |
|--|---|--|--|---------------------|-----------------------------------|------------------------------------|
|  |   |  |  | Group Symbol        | Group Name <sup>B</sup>           |                                    |
| <b>Coarse-Grained Soils:</b><br>More than 50% retained on No. 200 sieve                  | <b>Gravels:</b><br>More than 50% of coarse fraction retained on No. 4 sieve | <b>Clean Gravels:</b><br>Less than 5% fines <sup>C</sup>       | $Cu \geq 4$ and $1 \leq Cc \leq 3$ <sup>E</sup>              | GW                  | Well-graded gravel <sup>F</sup>   |                                    |
|  |   |  | $Cu < 4$ and/or $[Cc < 1 \text{ or } Cc > 3.0]$ <sup>E</sup> | GP                  | Poorly graded gravel <sup>F</sup> |                                    |
|  |   | <b>Gravels with Fines:</b><br>More than 12% fines <sup>C</sup> | Fines classify as ML or MH                                   | GM                  | Silty gravel <sup>F, G, H</sup>   |                                    |
|  |   |  | Fines classify as CL or CH                                   | GC                  | Clayey gravel <sup>F, G, H</sup>  |                                    |
|  | <b>Sands:</b><br>50% or more of coarse fraction passes No. 4 sieve          | <b>Clean Sands:</b><br>Less than 5% fines <sup>D</sup>         | $Cu \geq 6$ and $1 \leq Cc \leq 3$ <sup>E</sup>              | SW                  | Well-graded sand <sup>I</sup>     |                                    |
|  |   |  | $Cu < 6$ and/or $[Cc < 1 \text{ or } Cc > 3.0]$ <sup>E</sup> | SP                  | Poorly graded sand <sup>I</sup>   |                                    |
|  |   | <b>Sands with Fines:</b><br>More than 12% fines <sup>D</sup>   | Fines classify as ML or MH                                   | SM                  | Silty sand <sup>G, H, I</sup>     |                                    |
|  |   |  | Fines classify as CL or CH                                   | SC                  | Clayey sand <sup>G, H, I</sup>    |                                    |
| <b>Fine-Grained Soils:</b><br>50% or more passes the No. 200 sieve                       | <b>Silts and Clays:</b><br>Liquid limit less than 50                        | <b>Inorganic:</b>  | $PI > 7$ and plots on or above "A" line                      | CL                  | Lean clay <sup>K, L, M</sup>      |                                    |
|  |   |  | $PI < 4$ or plots below "A" line <sup>J</sup>                | ML                  | Silt <sup>K, L, M</sup>           |                                    |
|  |   | <b>Organic:</b>  | Liquid limit - oven dried                                    | < 0.75              | OL                                | Organic clay <sup>K, L, M, N</sup> |
|  |   |  | Liquid limit - not dried                                     |                     |                                   | Organic silt <sup>K, L, M, O</sup> |
|  | <b>Silts and Clays:</b><br>Liquid limit 50 or more                          | <b>Inorganic:</b>  | $PI$ plots on or above "A" line                              | CH                  | Fat clay <sup>K, L, M</sup>       |                                    |
|  |   |  | $PI$ plots below "A" line                                    | MH                  | Elastic Silt <sup>K, L, M</sup>   |                                    |
|  |   | <b>Organic:</b>  | Liquid limit - oven dried                                    | < 0.75              | OH                                | Organic clay <sup>K, L, M, P</sup> |
|  |   |  | Liquid limit - not dried                                     |                     |                                   | Organic silt <sup>K, L, M, Q</sup> |
|  | <b>Highly organic soils:</b>  | Primarily organic matter, dark in color, and organic odor      |  |                     | PT                                | Peat                               |

<sup>A</sup> Based on the material passing the 3-inch (75-mm) sieve.

<sup>B</sup> If field sample contained cobbles or boulders, or both, add "with cobbles or boulders, or both" to group name.

<sup>C</sup> Gravels with 5 to 12% fines require dual symbols: GW-GM well-graded gravel with silt, GW-GC well-graded gravel with clay, GP-GM poorly graded gravel with silt, GP-GC poorly graded gravel with clay.

<sup>D</sup> Sands with 5 to 12% fines require dual symbols: SW-SM well-graded sand with silt, SW-SC well-graded sand with clay, SP-SM poorly graded sand with silt, SP-SC poorly graded sand with clay.

<sup>E</sup>  $Cu = D_{60}/D_{10}$      $Cc = \frac{(D_{30})^2}{D_{10} \times D_{60}}$

<sup>F</sup> If soil contains  $\geq 15\%$  sand, add "with sand" to group name.

<sup>G</sup> If fines classify as CL-ML, use dual symbol GC-GM, or SC-SM.

<sup>H</sup> If fines are organic, add "with organic fines" to group name.

<sup>I</sup> If soil contains  $\geq 15\%$  gravel, add "with gravel" to group name.

<sup>J</sup> If Atterberg limits plot in shaded area, soil is a CL-ML, silty clay.

<sup>K</sup> If soil contains 15 to 29% plus No. 200, add "with sand" or "with gravel," whichever is predominant.

<sup>L</sup> If soil contains  $\geq 30\%$  plus No. 200 predominantly sand, add "sandy" to group name.

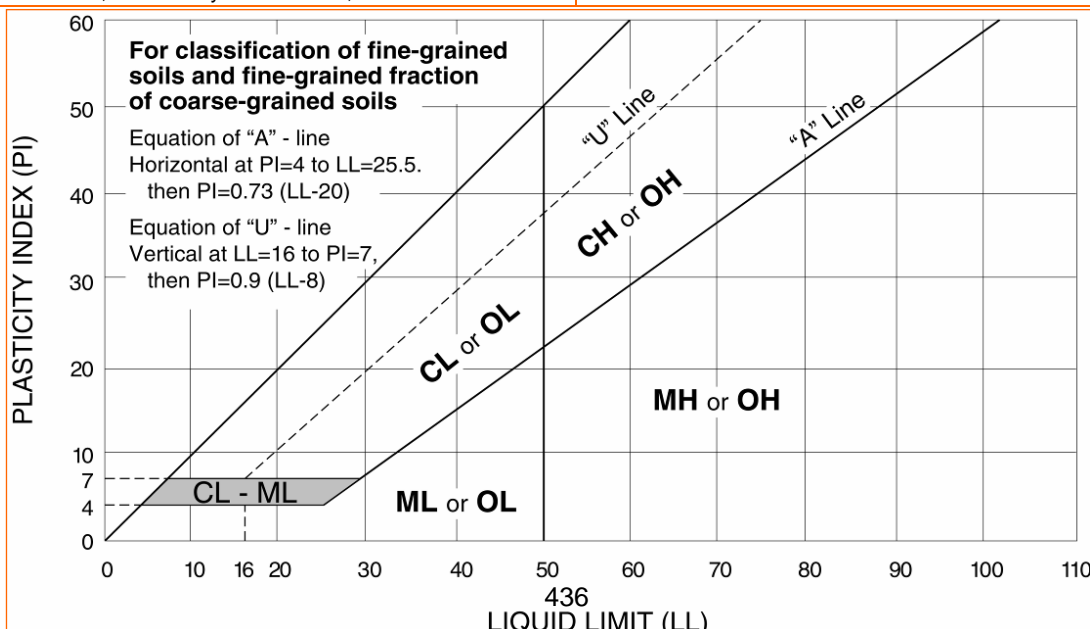
<sup>M</sup> If soil contains  $\geq 30\%$  plus No. 200, predominantly gravel, add "gravelly" to group name.

<sup>N</sup>  $PI \geq 4$  and plots on or above "A" line.

<sup>O</sup>  $PI < 4$  or plots below "A" line.

<sup>P</sup>  $PI$  plots on or above "A" line.

<sup>Q</sup>  $PI$  plots below "A" line.



ATTACHMENT J  
TECHNICAL SPECIFICATIONS

| <u>SECTION</u> | <u>DESCRIPTION</u>                |
|----------------|-----------------------------------|
| 02000          | Infilled Synthetic Turf           |
| 02102          | Clearing and Grubbing             |
| 02210          | Subgrade Preparation              |
| 02224          | Pipe Boring, Drilling and Jacking |
| 02230          | Excavation                        |
| 02240          | Lime Stabilization                |
| 02571          | Sanitary and Storm Sewers         |
| 02580          | Storm Sewer Structures            |
| 19000          | Trench Protection                 |

General Conditions of Contract for Engineering  
Construction

**SECTION 02000**  
**INFILLED SYNTHETIC TURF**

**GENERAL REQUIREMENTS**

RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions apply to this section.

SCOPE OF WORK

Furnish all labor, materials, tools and equipment necessary to install, in place, all synthetic turf material as indicated on the plans and as specified herein. The installation of all new materials shall be performed in strict accordance with the manufacturer's written installation instruction, and in accordance with all approved shop drawings.

- A. Prior to order of materials, the Turf Contractor shall submit the following:
1. Product Data including Independent Test Lab Results
  2. Installation Details
  3. Sample Warranty
  4. Field layout and striping plans
  5. Details on construction, especially any details that may deviate from plans and specifications.
- B. Prior to the beginning of installation, the manufacturer/installer of the synthetic turf shall inspect the subbase and supply a Certificate of Subbase Acceptance for the purpose of obtaining manufacturer's warranty for the finished synthetic playing surface.
- C. Prior to Final Acceptance, the Contractor shall submit to the Owner three (3) copies of Maintenance Manuals, which will include necessary instructions for the proper care and preventative maintenance of the synthetic turf system, including painting and striping.

SHOP DRAWINGS

- A. Shop drawings shall be prepared at the scale of the construction documents and contain all pertinent information regarding installation. These drawings shall be submitted to the Owner for approval prior to the manufacturing and shipment of materials.
- B. Submit drawings for:
1. Installation details; edge detail, goal post detail, other inserts and covers, etc. Striping plan; layouts showing any field lines, markings and boundaries, and field logos per project drawings.

## QUALITY ASSURANCE

A. Manufacturer/Installer's Experience:

The synthetic turf installer/manufacture shall have manufactured and installed at least fifty (50) acceptable installations of full-size baseball or softball fields within the past five (5) years with a tufted monofilament fiber synthetic turf infilled with a layered system of pea gravel and rubber. Provide this listing with the bid.

The Turf Contractor shall employ only qualified, experienced supervisors and technicians skilled in the installation of the specified system.

B. Turf Contractor shall meet the following criteria:

1. Turf Contractor must have proper Contractors license, authority to do business in the state bidding, in good standing, and have never had revocation of the same.
2. Turf Contractor must have been in business for ten (10) years under the same name and corporate organization.
3. Turf Contractor must have NOT had a Surety or Bonding Company finish work on any contract within the last ten (10) years.
4. Turf Contractor must have not been disqualified or barred from performing work for any public Owner or other contracting entity in the last ten (10) years.
5. Turf Contractor must not have any fields replaced under warranty.
6. Turf Contractor must not be currently involved with any patent or trademark litigation, specifically being sued or suing for patent infringement.
7. Turf Contractor must be a member of American Sports Builders Association (A.S.B.A) for more than 10 years and be in good standing with the association and must have a Certified Field Builder on staff during the bidding and construction process.
8. Any Turf Contractor which has been in business for less than 10 years, had a name change within that time period, has changed/modified its name, had a legal structure change or any business that has had a 35% change in ownership in the last 10 years, will not be considered as a contractor or supplier.
9. Turf Contractor must be a single source contractor. The contractor must install the synthetic turf and the base construction or repair with its own employees (not subcontractors) and must self-perform 100% of total scope of work.
10. Turf Contractor must utilize the Field Lock System US Patent #7,838,096 and have FieldLock certification.
11. Turf Contractor must manufacture its own fiber and synthetic turf, two-step distribution is not acceptable. Turf Contractors who do not manufacture their own fiber and synthetic turf shall be disqualified.

12. Turf Contractor shall use Helix technology, patent pending, on the turf fibers during the manufacturing/extrusion process of the synthetic turf system.
13. Turf Contractor must have manufactured its own synthetic turf for at least 10 years.
14. Turf Foreman must currently be employed by Turf Contractor and have been an employee not subcontractor of Turf Contractor for at least the last five years.
15. Turf Contractor must be a member of the Synthetic Turf Council.
16. Turf Contractor must self-perform the laser grading of the stone, curb work, drainage work and all other site work associated with the construction of the synthetic turf field.
17. Turf Contractor must provide liability insurance policy with aggregate umbrella liability coverage of \$10,000,000.
18. The synthetic turf system must have been in service in the U.S. for at least ten years.

C. Warranty:

The Turf Contractor shall submit the synthetic turf manufacturer's warranty.

The warranty guarantees the usability and playability of the synthetic turf system for its intended uses for an eight (8) year period commencing with the date of Substantial Completion.

1. The warranty submitted must have the following characteristics:
  - a. Must provide coverage for eight (8) years from the date of Substantial Completion.
  - b. Must warrant materials and workmanship.
  - c. Must verify through a third party that the materials installed meet or exceed the product specifications.
  - d. Must have a provision to either make a cash refund or repair or replace such portions of the installed materials that are no longer serviceable to maintain a serviceable and playable surface.
  - e. Must be a manufacturer's warranty from a single source covering workmanship and all self-manufactured or procured materials.
  - f. Turf Contractor must provide a full eight-year third party insured warranty on the synthetic turf with an aggregate coverage of \$1,000,000.

## EXISTING CONDITIONS

- A. If the surface on which the new synthetic turf system is to be placed is an existing asphaltic/concrete base, the Turf Contractor will be responsible for any damage to the concrete during removal/installation of the synthetic turf system. The foul poles, if any, are to be removed and reinstalled by the Owner or Prime Contractor to facilitate the installation of the new synthetic turf system.
- B. If the surface on which the new synthetic turf system is to be placed is a new asphaltic concrete base or a new base of porous aggregate, the Synthetic Turf Contractor will be responsible for any damage to the subbase during removal/installation of the synthetic turf system *after* the deficiencies (if any) have been corrected as noted on the Certificate of Subbase Acceptability. New foul poles (if any) and/or infield dirt mix backfill within the contiguous turf limits or immediately adjacent

thereto are not to be installed by the Owner/Prime Contractor until after the new synthetic turf system has been completed.

## SCHEDULE

- A. Turf Contractor shall complete all work on the synthetic turf system in accordance with the published project schedule.
- B. The Turf Contractor will require unencumbered use of an area within 30 feet of the synthetic turf area(s) being installed in order to complete his work. Turf Contractor shall also be afforded unencumbered access through the construction site to reach the turf field area being installed.

## SURFACE AREA

- A. The Turf Contractor is to verify all measurements.

## UTILITIES

- A. Owner/Prime Contractor will supply necessary water, adequate lighting and electricity for installation. Owner/Prime Contractor shall permit the use of toilet and wash up facilities.

## PRODUCTS

### MATERIALS

- A. Synthetic turf shall be comprised of a helix-shaped mono fiber tufted and coated with a secondary backing of high-grade polyurethane. The synthetic turf yarn shall be comprised of a C8-based linear low density polyethylene polymer (LLDPE) with a 10,000 PPM UV Stabilizer. The fibers shall be tufted to a finished pile height of approximately 1 ¼" - 2 ¼". The turf fabric shall be filled with a layered system of pea gravel and rubber.
- B. All components and their installation method shall be designed and manufactured for use on outdoor athletic fields. The materials as hereinafter specified, should be able to withstand full climatic exposure in all climates, be resistant to insect infestation, rot, fungus and mildew; to ultra-violet light and heat degradation, and shall have the basic characteristic of flow through-drainage allowing free movement of surface run-off through the turf fabric where such water may flow to the existing subbase and into the field drainage system.



- C. The finished playing surface shall appear as mowed grass with no irregularities and shall afford excellent traction for conventional athletic shoes of all types. The finished surface shall resist abrasion and cutting from normal use. The installed system shall be suitable for baseball, softball, PE classes, intramurals and recreational use.
- D. Pile yarn (Polyethylene) shall be a proven athletic caliber yarn designed specifically for outdoor use and stabilized to resist the effect of ultraviolet degradation, heat, foot traffic, water and airborne pollutants.
- E. Infill material shall be layered system of pea gravel and rubber in accordance with the manufacturer's recommendations and the owner's preference and shall be constructed in accordance with the United States Patent #6,800,339 B. No other infill will be accepted.
- F. Perimeter and interior edge details, underground storm sewer piping and connections, and goalpost foundations required for the system shall be as detailed and recommended by the manufacturer, and as approved by the Owner.
- G. Basis of Design: Major Play Matrix® with Helix shape memory technology as manufactured by Hellas Construction, Inc.
- H.

|   | <u>Standard</u> | <u>Property</u>  | <u>Specification</u>   |
|---|-----------------|--|--|
| 1 | ASTM D418/D5848 | Pile Weight<br><br>Hi-Traffic area includes an 18 oz polyethylene secondary yarn (grass-like thatch) | Infield 42 oz. /SY<br>Skin Area 42 oz. /SY<br>Hi-Traffic 80 oz. /SY<br>Outfield 42 oz. /SY<br>Warning Track 42 oz. /SY       |
| 2 | ASTM D5848      | Primary and Secondary Backing Weight   | 7.9 oz /SY   |
| 3 | ASTM D5848      | Secondary Coating Weight   | 22 oz. /SY   |
| 4 | ASTM D5848      | Total Weight   | Infield 71.9 oz /SY<br>Skin Area 71.9 oz /SY<br>Hi-Traffic 109.9 oz /SY<br>Outfield 71.9 oz /SY<br>Warning Track 71.9 oz /SY |
| 5 | ASTM D1907      | Yarn Denier primary yarn<br>Yarn Denier secondary yarn   | 12,400<br>5,000  |
| 6 | ASTM D418/D5848 | Pile Height  | Infield 1 ½" – 2"<br>Skin Area 1 ¼" – 1 ¾"<br>Hi-Traffic 1 ¼" – 1 ¾"<br>Outfield 1 ¾" – 2 ¼"<br>Warning Track 1 ¼" – 1 ¾"    |
| 7 | ASTM D5793      | Tufting Gauge  | 1/2"   |
| 8 | ASTM D5848      | Primary Backing  | Tri-layer woven Polypropylene  |

|   |                  |   |  |
|---|------------------|---|--|
| 9   | ASTM D5848       | Secondary Coating   | Polyurethane   |
| 10  | ASTM D1335       | Tuft Bind without Infill  | 10 lbs. +/-  |
| 11  | ASTM D1682/D5034 | Grab Tear (length)  | >300 lbs. Force  |
| 12  | ASTM D1682/D5034 | Grab Tear (width)   | >350 lbs. Force  |
| 13  | ASTM D4991       | Carpet Permeability   | >40 inches/hour  |
| 14  | ASTM D2859       | Flammability (Pill Burn)  | Pass   |
| 15  | ASTM F355        | G-max (Impact Attenuation)  | <200 over warranty life  |
| 16  | ASTM E-11        | Realfill Infill Weight  | 4.5-6.5 lbs  |
| 17  |                  | RealFill Infill Ratios<br>Infield<br>Skin Area<br>Hi-Traffic<br>Outfield<br>Warning Track | 70% pea gravel / 30% rubber<br>80% pea gravel / 20% rubber<br>80% pea gravel / 20% rubber<br>65% pea gravel / 35% rubber<br>100% pea gravel and sand |
| 18  |                  | Fabric Width  | 15'  |
| 19  |                  | Perforation   | 3/16" Holes 4" x 4"  |
| 20  | ASTM D3218       | Yarn  | Average thickness 170 microns<br>C8 LLDPE Resin<br>10,000 PPM UV stabilizer  |
| All Characteristics listed above are nominal +/- 5% |                  |   |  |

**Major Play Matrix® with Helix Technology** synthetic turf incorporates life like individual blades of grass, tufted into the strongest and most dimensionally stable backing system available with a polyurethane pre- coat for the ultimate in tuft-bind.

**Major Play Matrix with Helix Technology** is filled with a pea gravel and cuboidal rubber infill - REALFILL™ Infill will be a minimum of 75% of synthetic turf pile height.

Helix shape memory technology is added to Matrix fibers during the manufacturing/extrusion process which makes the fiber twist into a helix shape. This unique shape locks in and secures the infill to improve traction. The monofilament fibers twist to cover and trap the infill preventing the system from expelling the infill upon impact

**Major Play Matrix with Helix Technology** is a fully UV stabilized system ideal for outdoor use.

Due to the many variations in manufacturing dye lots, it should be expected that some variation in fiber color exists. Although we consider these variances to be minimal, there is no way to assure exact color and absolute uniformity of color hues.

Variances in color amongst fiber does not affect the performance or warranty of the fiber.

## EXECUTION

### GENERAL

- A. The installation shall be performed in full compliance with approved shop drawings.
- B. Only factory-trained technicians, skilled in the installation of athletic caliber synthetic turf systems working under the direct supervision of the synthetic turf manufacturer's installation supervisors shall undertake the placement of the system.
- C. The surface to receive the synthetic turf shall be inspected and certified by the turf manufacturer as ready for the installation of the synthetic turf system and must be perfectly clean as installation commences and shall be maintained in that condition throughout the process.

### INSTALLATION

- A. The subbase and curbs shall be inspected by the Engineer or Sitework Contractor by means of a laser level and plotted on a 10-foot grid. Based upon the Turf Contractor's inspection of the topological survey, the Sitework Contractor shall fine grade the subbase suitably - including properly rolling and compacting the base to achieve a surface planarity within 1/4" in 10 feet (+0, - 1/4"0). OWNER, ENGINEER OR PRIME CONTRACTOR SHALL NOT APPROVE THE SUBBASE FOR TOLERANCE TO GRADE WITHOUT OBTAINING THE TOPOLOGICAL SURVEY.
- B. The Turf Project Superintendent shall thoroughly inspect all materials delivered to the site both for quality and quantity to assure that the entire installation shall have sufficient materials to maintain the schedule and proper mixing ratios.
- C. Synthetic turf shall be loose laid across the field and attached to the perimeter edge detail. Turf shall be of sufficient length to permit full cross-field installation. No head or cross seams will be allowed, except as required for inlaid fabric striping or to accommodate programmed cut-outs.
- D. All seams shall be flat, tight, and permanent with no separation or fraying. All seams and markings shall be adhered to a special tape with a single component, high strength polyurethane adhesive applied per the Turf Supplier's standard procedures for outdoor applications.
- E. Infill materials shall be properly applied in numerous thin lifts using special broadcasting equipment to produce a layered system of pea gravel and SBR rubber particles. The turf shall be raked and brushed properly as the mixture is applied. The layered system of pea gravel and rubber infill materials can only be applied when the turf fabric is dry.
- F. Weather/climatic conditions may be a factor in delay of installation, but shall not warrant the accrual of additional liquidated damages. Should the ambient outdoor temperature fall below 45 degrees Fahrenheit, the Turf Contractor and Owner will discuss available options and/or stoppage of work. However, the final decision shall be at the Turf Contractor's discretion.

### FIELD MARKINGS AND DECORATIONS

- A. Field markings and decorations shall be installed in accordance with approved project shop drawings.

## CLEAN UP

- A. Turf Contractor shall provide the labor, supplies and equipment as necessary for final cleaning of surfaces and installed items.
- B. All usable remnants of new material shall become the property of the Owner.
- C. The Turf Contractor shall keep the area clean throughout the project and clear of debris.
- D. Surfaces, recesses, enclosures, etc., shall be cleaned as necessary to leave the work area in a clean, immaculate condition ready for immediate occupancy and use by the Owner.

## 4.0 OTHER MATERIALS AND EQUIPMENT

- A. Maintenance Equipment

Provide one (1) towed, non-powered Turf Sweeper with hitch, excluding prime mover vehicle. The sweeper attachment shall be of sufficient size to cover a 36" wide swath in a single pass. The sweeper attachment shall be fitted with synthetic bristle brushes as recommended by the synthetic turf manufacturer and shall be used primarily to collect surface debris.

## **SECTION 02102**

### **CLEARING AND GRUBBING**

#### **PART 1 - GENERAL**

##### **1.01 GENERAL DESCRIPTION OF WORK:**

- A. Cleaning and grubbing on project site of trees, stumps, brush, roots, vegetation, logs, rubbish and other objectionable matter within limits described in specifications or as shown on plans.
- B. Cleaning and grubbing shall be in advance of grading operation except that in cuts over 3 feet in depth, grubbing may be done simultaneously with excavation, provided objectionable matter is removed as specified.
- C. Disposal of all debris resulting from clearing and grubbing work.

##### **1.02 PROTECTION OF ADJACENT WORK:**

- A. Protect all areas outside indicated construction areas.
- B. Protect existing improvements, adjacent property, utilities and other facilities, and trees and plants not to be removed from injury or damage.

#### **PART 2 - PRODUCTS**

##### **2.01 MATERIALS:**

- A. Provide materials required to perform work as specified.

#### **PART 3 - EXECUTION**

##### **3.01 CLEARING:**

- A. Clear all areas covered by dikes, roads, structures and embankments within project limits unless otherwise shown in plans.
- B. Remove all saplings, brush, down-timber and debris unless shown or directed otherwise.
- C. Use tree wound paint to treat scars, gashes or limb stubs on trees not removed.

3.02 GRUBBING:

- A. Trees, stumps, root systems, rocks and other obstructions shall be removed to the depths shown when they fall within the construction templates for the following items:
  - 1. Footings 18" below bottom of footing
  - 2. Sidewalks (or other types of walks) 12" below bottom of walk
  - 3. Roadways or Streets 18" below bottom of subgrade
  - 4. Parking Areas 18" below bottom of subgrade
  - 5. Grassed Areas 18" below top soil
  - 6. Fills 24" below bottom of fill
- B. Blasting not permitted.

3.03 REMOVAL OF DEBRIS AND CLEANUP:

- A. Burn as permitted by regulating agencies or the ENGINEER as work progresses.
- B. Unguarded fires will not be permitted.
- C. Permits will be obtained, where required, for necessary burning or disposal sites.
- D. Dispose of all waste materials not burned by removal from site.
- E. Materials cleared and grubbed shall be the property of the CONTRACTOR and shall be his responsibility for proper disposal.

**PART 4 - MEASUREMENT AND PAYMENT**

4.01 CLEARING AND GRUBBING:

- A. Clearing and Grubbing shall be measured for payment either in acres or by lump sum only for areas indicated on the plans, or as provided in the proposal and contract.
- B. When not listed as separate contract pay item, Clearing and Grubbing shall be considered as incidental work, and the cost thereof shall be included in such contract pay items as are provided in the proposal contract.



- C. Compensation, whether by contract pay item or incidental work will be for furnishing all materials, labor, equipment, tools and incidentals required for the work, all in accordance with the plans and these specifications.

**\*\*\* END OF SECTION \*\*\***

## SECTION 02210

### SUBGRADE PREPARATION

#### PART 1 - GENERAL

##### 1.01 GENERAL DESCRIPTION OF WORK:

- A. This work shall consist of scarifying, blading and rolling the subgrade to obtain a uniform texture and provide as nearly as practical a uniform density for the full depth of the subgrade.

#### PART 2 - PRODUCTS

##### 2.01 MATERIALS:

- A. Provide materials required to perform work as specified.

#### PART 3 - EXECUTION

##### 3.01 CONSTRUCTION METHODS:

- A. All preparing of the right-of-way and /or clearing and grubbing shall be completed before starting the subgrade preparation.
- B. The subgrade shall be scarified and shaped in conformity with the typical sections and the lines and grades indicated or as established by the ENGINEER by the removal of existing material or addition of approved material.
- C. All unsuitable material shall be removed and replaced with approved material.
- D. All foundations, walls or other objectionable material shall be removed to in accordance with Section 02101, Preparation of Right-of-Way. All holes, ruts and depressions shall be filled with approved material.
- E. The surface of the subgrade shall be finished to the lines and grades as established and be in conformity with the typical section indicated.
- F. Any deviation in excess of 1/2 inch cross section and in a length of 10 feet measured longitudinally shall be corrected by loosening, adding or removing material, reshaping and compacting by sprinkling and rolling.
- G. Sufficient subgrade shall be prepared in advance to insure satisfactory prosecution of the work.

- H. The CONTRACTOR will be required to set blue tops for the subgrade on centerline, at quarter points and curb lines or edge of pavement at intervals not exceeding 50 feet.
- I. All suitable material removed may be utilized in the subgrade with the approval of the ENGINEER. All other material required for completion of the subgrade shall also be subject to approval by the ENGINEER.
- J. Subgrade materials on which structures shall be placed shall be compacted by approved mechanical tamping equipment to a dry density of the total material of not less than 95 percent nor more than 100 percent of the maximum dry density as determined in accordance with TX DOT Test Method Tex-114-E.
- K. Subgrade materials on which planting or turf will be established shall be compacted to a minimum of 85 percent of the maximum dry density as determined in accordance with SDHPT Test Method Tex-114-E.
- L. Tests for density will be made as soon as possible after compacting operations are completed. If the material fails to meet the density specified, it shall be reworked as necessary to obtain the density required.
- M. Just prior to placing any base materials, density and moisture content of the top 6 inches of compacted subgrade shall be checked and if tests show the density to be more than 2 percent below the specified minimum or the moisture content to be more than 3 percent above or below the optimum, the subgrade shall be reworked as necessary to obtain the specified compaction and moisture content.
- N. When lime stabilization of the subgrade is specified, the lime is to be added in accordance with Section 02240, Lime stabilization.

#### **PART 4 - MEASUREMENT AND PAYMENT**

##### **4.01 MEASUREMENT:**

- A. All acceptable subgrade preparation will be measured by the square yard.
- B. The measured area includes the entire width of the roadway for the entire length as indicated.

##### **4.02 PAYMENT:**

- A. The accepted quantities of subgrade preparation will be paid for at contract unit bid price per square yard.

- B. When not listed as a separate contract pay item, subgrade preparation shall be considered as incidental work, and the cost thereof shall be included in such contract pay item(s) as are provided in the proposal contract.
- C. Compensation, whether by contract pay item or incidental work will be for furnishing all materials, labor, equipment, tools and incidentals required for the work, all in accordance with the plans and these specifications.

**\*\*\* END OF SECTION \*\*\***

## SECTION 02224

### PIPE BORING, DRILLING AND JACKING

#### PART 1 - GENERAL

##### 1.01 GENERAL DESCRIPTION OF WORK:

- A. This work shall consist of boring, drilling, or jacking operations related to the installation of water pipe, sanitary and storm sewer pipe, and traffic conduit in areas where trenching is not feasible.

#### PART 2 - PRODUCTS

- A. The steel casing shall be seamless or electric resistance-welded tubing for sizes under 24-inch O.D. and standard double-submerged arc-weld for sizes over 24".
- B. Tubing shall be A-106, Grade B with bevelled ends.
- C. Table 02224-1 notes the steel casing size and thickness as related to the carrier pipe.

TABLE 02224-1

#### CASING SIZE VERSUS CARRIER SIZE

| Steel Casing Diameter<br>and Wall Thickness | Carrier<br>Pipe (Inside Diameter) |
|---|-----------------------------------|
| 14" Schedule 30                             | 6"                                |
| 16" Schedule 30                             | 8"                                |
| 18" Standard Class                          | 10"                               |
| 22" Standard Class                          | 12"                               |
| 24" Schedule 20                             | 14"                               |
| 26" Schedule 20                             | 16"                               |
| 30" 0.375" Wall                             | 18"                               |
| 36" 0.375" Wall                             | 24"                               |

#### PART 3 - EXECUTION

##### 3.01 BORING:

- A. Boring shall be performed to alignment and grade as shown on the construction drawings.

- B. The earth and/or rock augers shall not exceed the O.D.(outside diameter) of the steel casing by more than 1/4 of an inch. The boring and insertion of the steel casing shall be performed with equipment capable of simultaneous operations.
- C. The feed rate of augers and hydraulic pushing of the casing shall be the same. Under no circumstances will boring be allowed unless operations are simultaneous.
- D. Every effort shall be made to avoid loss of earth.
- E. Excavated material shall be removed from the casing as excavation progresses and no accumulation of such material within the casing shall be permitted.
- F. Upon completion of the boring operations, all voids around the outside face of the casing shall be filled by grouting. Grouting equipment and material shall be on the job site before boring operations are started in order that grouting around the bored casing may be started immediately after the boring operations have finished.
- G. The allowable tolerance as to grade and alignment of the installed casing shall not exceed 1/10 of a foot per hundred feet of casing length.
- H. The CONTRACTOR shall be responsible for locating any underground utilities and for any damage resulting thereto.
- I. The CONTRACTOR shall be fully responsible for producing a sound, tight installation, true to line and grade. Carrier pipe shall be skidded through the casing on redwood skids tied with stainless-steel.
- J. A suggested method is shown in the plan details. Other methods shall be approved in writing by the Engineer.

### 3.02 BORING INSTALLATION DETAILS:

- A. Prior to the start of the boring operations, the CONTRACTOR shall submit the following details to the ENGINEER.
  - 1. Boring pit bracing
  - 2. Casing boring head
- B. Only workmen experienced in boring operation shall perform the work.

### 3.03 DRILLING AND JACKING FOR ELECTRICAL CONDUIT:



- A. Metallic conduit shall be installed under existing pavement by approved jacking or drilling methods.
- B. Non-metallic conduit shall not be installed by jacking. Non-metallic conduit may be installed by drilling if a hole larger than the conduit is pre-drilled and the conduit is hand-installed.
- C. Jack or drilling pits shall be no less than 2 feet from the edge of any type of any pavement, measured from the side of the pit nearest to the pavement.

#### 3.04 JACKING:

- A. If the grade of the pipe at the jacking end is below the ground surface, suitable pits or trenches shall be excavated for the purpose of conducting the jacking operations and for placing end joints of the pipe. Such work shall be sheeted securely and braced in a manner to prevent earth cave-ins and to provide a safe, stable work area.
- B. Heavy duty jacks suitable for forcing the pipe through the embankment shall be provided. In operating jacks, even pressure shall be applied to all jacks used so that pressure will be applied to the pipe uniformly around the ring of the pipe.
- C. A suitable jacking frame or back stop shall be provided. The pipe to be jacked shall be set on guides properly braced together, to support the section of the pipe and to direct it in the proper line and grade.
- D. The whole jacking assembly shall be placed so as to line up with the direction and grade of the pipe. In general, embankment material shall be excavated just ahead of the pipe and material removed through the pipe and the pipe forced through the embankment with jacks, into the space thus provided.
- E. The excavation for the underside of the pipe, for at least 1/3 of the circumference of the pipe, shall conform to the contour and grade of the pipe. A clearance of not more than 2 inches may be provided for the upper half of the pipe. This clearance is to be tapered off to zero at the point where the excavation conforms to the contour of the pipe.
- F. The distance that the excavation shall extend beyond the end of the pipe depends on the character of the material, but it shall not exceed 2 feet in any case. This distance shall be decreased if the character of the material being excavated makes it desirable to keep the advance closer to the end of the pipe.

- G. The pipe, preferably, shall be jacked from the low or downstream end. Lateral or vertical variation in the final position of the pipe from the line and grade established by the ENGINEER will be permitted only to the extent of 1 inch in 10 feet, provided that such variation shall be regular and only in one direction and that the final grade or flow line shall be in the direction required.
- H. If the CONTRACTOR desires, he may use a cutting edge of steel plate around the head end of the pipe extending a short distance beyond the end of the pipe with inside angles or lugs to keep the cutting edge from slipping back onto the pipe.
- I. When jacking of pipe is once begun, the operation shall be carried on without interruption, insofar as practical, to prevent the pipe from becoming firmly set in the embankment.
- J. Any pipe damaged in jacking operations shall be removed and replaced by the CONTRACTOR at his entire expense.
- K. Immediately after jacking is complete and the carrier or encasement pipe is accurately positioned and approved for line and grade, the clearance space between the pipe and soil shall be completely filled by pressure grouting for the entire length of the installation.
- L. The pits or trenches excavated to facilitate jacking operations shall be backfilled immediately after the jacking of the pipe has been completed.

### 3.05 JACKING INSTALLATION DETAILS:

- A. Prior to the start of the jacking operations, the CONTRACTOR shall submit the following details to the ENGINEER.
  - 1. Jacking pit bracing
  - 2. Casing boring head
- B. Only workmen experienced in jacking operation shall perform the work.

## **PART 4 - MEASUREMENT AND PAYMENT:**

### 4.01 MEASUREMENT:

- A. BORING:

1. Measurement shall be per linear foot of bored casing, and shall include furnishing all labor, materials, equipment, and work involved in the boring operations.

2. The unit measurement shall also include skids, steel ties, grouting, and other items associated with the boring and casing.

B. DRILLING AND JACKING FOR ELECTRICAL CONDUITS:

1. Measurement shall be per linear foot of installed electrical conduit and shall include all labor, materials, equipment, and work required for the operation.

C. JACKING:

1. Jacking carrier or encasement pipe will be measured by the linear foot of pipe complete in place. Such measurement will be made between the ends of the pipe along the central axis as installed.

2. The unit measurement shall also include skids, steel ties, grouting, and other items associated with the boring and casing.

4.02 PAYMENT:

A. BORING:

1. The accepted quantities for boring will be paid at the unit bid price per diameter of casing per linear foot.

2. Payment for carrier pipe will be paid in accordance with appropriate contract items.

B. DRILLING AND JACKING FOR ELECTRICAL CONDUIT:

1. The accepted quantities for drilling and jacking for electrical conduit will be paid at the unit bid price per diameter per linear foot.

C. JACKING:

1. The accepted quantities for jacking will be paid at the unit bid price per linear foot of carrier or encasement pipe of the type, size, and class indicated.

D. When not listed as a separate contract pay item, boring ,drilling and jacking electrical conduit or jacking shall be considered as incidental work, and the cost there of shall be included in such contract pay item(s) as provided in the contract proposal.

- E. Compensation, whether by contract pay item or incidental work will be for furnishing all materials, labor, equipment, tools and incidentals required for the work, all in accordance with the plans and these specifications.

**\* \* \* END OF SECTION \* \* \***

## **SECTION 02230**

### **EXCAVATION**

#### **PART 1 - GENERAL**

##### **1.01 GENERAL DESCRIPTION OF WORK:**

- A. This work shall consist of excavating and properly utilizing or otherwise properly disposing of all excavated materials, of whatever character, within the limit of work.
- B. Excavation shall also consist of constructing, compacting, shaping and finishing of all earthwork in designated areas on the plans, as specified herein, and in conformity with the required lines grades and typical cross sections or as directed by the ENGINEER.

#### **PART 2 - PRODUCTS**

##### **2.01 CLASSIFICATION:**

- A. All excavations shall be unclassified as shall include all materials encountered regardless of their nature or the manner in which they are removed.

#### **PART 3 - EXECUTION**

##### **3.01 CONSTRUCTION METHODS:**

- A. Prior to commencing this work, all erosion control and tree protection measures required shall be in place and all utilities located and protected.
- B. Construction equipment shall not be operated within the drip line of trees, unless otherwise indicated.
- C. Construction materials shall not be stockpiled under the canopies of trees. No excavation or embankment shall be placed within the drip line of trees until tree wells are constructed.
- D. All excavation shall be performed as specified herein and shall conform to the established alignment, grades and cross sections.
- E. Suitable excavated materials may be utilized in constructing required embankments.
- F. The construction of all embankments shall conform to Section 02236 - Embankment. No material shall be stockpiled within the banks of a waterway.

- G. Unsuitable excavated materials or excavation in excess of that needed for construction shall be known as "Waste" and shall become the property of the CONTRACTOR and it shall become his sole responsibility to properly dispose of this material off site in an environmentally sound manner at a permitted disposal site.
- H. Adequate dewatering and drainage of excavation shall be maintained throughout the time required to complete the work.

#### **PART 4 - MEASUREMENT AND PAYMENT**

##### **4.01 MEASUREMENT:**

- A. Measurement of the volume of excavation in cubic yards by the average end areas. Cross sectional areas shall be computed from the existing ground section to the established line of the subgrade, as shown on typical sections for the limits of the right-of-way or other work limits, including parkway slopes and sidewalk areas.
- B. Measurement of the area in square yards of surface area excavated as shown on the typical sections included in the plans.
- C. Measurement of the volume of excavation is in cubic yards, based upon the average end areas taken from pre-construction cross sections and planned grades. The planned quantities for excavation will be used as the measurement for payment for this item.

##### **4.02 PAYMENT:**

- A. This item will be paid for at the contract unit price bid for "Excavation", as provided under the measurement method as included in the bid, which price shall be full compensation for all work herein specified: including dewatering, drainage, subgrade preparation, unless otherwise indicated and the furnishing of all materials, equipment, tools, labor and incidentals necessary to complete the work.
- B. When not listed as a separate contract pay item, excavation shall be considered as incidental work, and the cost thereof shall be included in such contract pay item(s) as are provided in the proposal contract.
- C. Compensation, whether by contract pay item or incidental work will be for furnishing all materials, labor, equipment, tools and incidentals required for the work, all in accordance with a the plans and these specifications.



**\*\*\* END OF SECTION \*\*\***

## SECTION 02240

### LIME STABILIZATION

#### PART 1 - GENERAL

##### 1.01 GENERAL DESCRIPTION OF WORK:

- A. Treating of subgrade, subbase, and base courses by the pulverization, addition of lime, mixing and compacting the mixed material to the required density.
- B. Application to natural ground, embankment, existing pavement, base or subbases under this contract, or as directed by the ENGINEER, which shall be constructed as specified herein and in conformity with the typical section, lines, and grades as shown on the plans.

##### 1.02 QUALITY ASSURANCE:

- A. Comply with the latest published edition (or addended portions thereof) of the following standards and codes:
  - 1. ASTM C-207 or Type N - Requirements for Hydrated Lime
  - 2. ASTM Designation C5 - Quick Lime for Structural Purposes
  - 3. Texas DOT Test Method Tex-600-J - Hydrated Lime
  - 4. ASTM D-1557 - Density of Compacted Materials
  - 5. ASTM D-2049 - Density of Compacted Materials
  - 6. Texas DOT Test Method Tex 113-E - Density of Compacted Materials
  - 7. AASHTO T-99, Method C - Density of Compacted Materials
  - 8. AASHTO M-216 - Hydrated Lime

#### PART 2 - PRODUCTS

##### 2.01 HYDRATED (DRY) LIME:

- A. Use, for stabilization of soils, a dry powder consisting primarily of calcium hydroxide (Ca(OH)<sub>2</sub>).
- B. Provide Material in accordance with Texas SDHPT Test Method TEX-600-J and conforming to the following chemical composition:

|   |          |
|---|----------|
| Hydrate Alkalinity, Percent by Weight Ca(OH) <sub>2</sub> | 90% Min. |
| Unhydrate Lime Content, Percent by Weight CaO             | 5% Max.  |
| "Free Water" Content, Percent by Weight H <sub>2</sub> O  | 4% Max.  |

And with the following residue retainage:

|                                  |           |
|----------------------------------|-----------|
| Residue Retained on No. 6 Sieve  | None      |
| Residue Retained on No. 10 Sieve | 1% Max.   |
| Residue Retained on No. 30 Sieve | 2.5% Max. |

- C. Store and handle hydrated lime in closed, weather proof containers, storage bins, or bags until immediately before application to the road.
- D. Furnish hydrated lime in trucks, as applicable, with weight of lime measured on certified scales and clearly marked on the truck or stamped on a haul ticket.
- E. Furnish hydrated lime in bags, as applicable, bearing the manufacturer's certified weight. Bags varying more than five percent may be rejected.

2.02 HYDRATED LIME SLURRY:

- A. Provide a pumpable suspension of solids, principally composed of hydrated lime, in water.
- B. Provide material with a "Solids Content" having a hydrated alkalinity  $\text{Ca}(\text{OH})_2$  of not less than 90 percent by weight and a residue retainage equal to the retainage specified in Part 2.01 above.
- C. Supply Type B, commercial lime slurry, with a "dry solids content" of at least 31% by weight of the slurry (Grade 1).
- D. Procure mixing water only from the City's water mains. The Contractor shall make arrangements with the City Water Department to obtain a meter and subsequent payment for water used.

2.03 TYPE C QUICKLIME (MASON'S LIME):

- A. GRADE S, quicklime, is unsuitable for "Dry Placing;" Provide as a dry powder in a tank, to form a lime slurry.
- B. GRADE DS, "pebble" quicklime, is suitable for either "Dry Placing" or for preparation of a slurry for "Slurry Placing."

## **PART 3 - EXECUTION**

### **3.01 GENERAL:**

- A. Provide a completed course of treated materials containing a uniform lime mixture, free from loose or segregated areas, of uniform density and moisture content, well bound for its full depth, and with a smooth surface and suitable for placement of subsequent courses.
- B. Regulate sequence of work, use proper amounts of lime, maintain the work, and rework the courses as necessary to meet the requirements of this specification.
- C. Construct and shape roadbed to conform with typical sections, lines, and grades as shown on the plans, or as directed by the ENGINEER.
- D. Excavate materials to be treated to the proposed bottom of lime treatment grade and remove or windrow to expose secondary grade.
- E. Correct any wet or unstable material below the secondary grade by scarifying, adding lime and compacting until uniform stability is achieved.
- F. Use a cutting or pulverizing machine, as applicable, to remove subgrade material accurately to secondary grade and pulverize the material at the same time. When a cutting or pulverizing machine is used, the requirement for exposing and windrowing the material is waived.
- G. Proof Roll subgrade before use of pulverizing machinery and correct any soft areas that proof rolling operations shall reveal.
- H. Materials for new bases and subbases shall be delivered, placed and spread in the required amount per station. The material shall be thoroughly mixed prior to the addition of lime.
- I. Lime shall be spread only on that area where first mixing operation can be completed in the same working day.
- J. The rate of lime application or the lime content of the treated material shall be as specified by the Engineer.

### **3.02 SLURRY PLACING:**

- A. Mix lime with water in trucks or approved distributors and apply as a thin water suspension or slurry.
- B. The lime slurry shall be applied with approved distributors by successive passes over a measured surface of roadway until the proper moisture and lime content is achieved.

- C. Lime slurry distributors shall be equipped with an agitator for maintaining lime and water in a uniform mixture.

### 3.03 DRY PLACING:

- A. Apply lime at a uniform rate by an approved screw type spreader box or by bag distribution until the proper lime content is achieved.
- B. Distribute lime in such a manner as to reduce scattering of lime to a minimum. Lime shall not be applied "dry" when wind conditions, in the opinion of the ENGINEER, will cause objectionable blowing of lime towards traffic or adjacent properties.
- C. Motor graders shall not be used to spread "dry" lime, except TYPE C, GRADE DS, "pebble" quicklime.
- D. Sprinkle material until proper moisture content is achieved.

### 3.04 MIXING

- A. Mixing procedures shall be the same for "Dry Placing" or "Slurry Placing" of lime.
- B. Treatment for Materials in Place:
  - 1. Thoroughly mix material and lime using approved road mixers or other approved equipment, until a homogeneous, friable mixture of material is obtained, free from all clods and lumps.
  - 2. For materials containing plastic clay or other materials not readily mixed with lime, mix as thoroughly as possible at the time of lime application, bring to proper moisture content, seal with a pneumatic roller, and leave to cure two to four days, unless otherwise directed by the ENGINEER.
  - 3. During curing period, material shall be kept moist by method(s) approved by the ENGINEER.
  - 4. Uniformly mix, after required curing time, using approved methods.
  - 5. Clods in soil binder - Lime mixture shall be reduced in size by raking, blading, discing, harrowing, scarifying or by other approved pulverization methods such that nonslaking aggregates obtained on the No. 4 sieve are removed. The remainder of the material shall meet the following requirements when test dry by laboratory sieves:

|                             |      |
|-----------------------------|------|
| Minimum Passing 1 3/4 inch  | 100% |
| Minimum Passing No. 4 Sieve | 60%  |

C. Treatment of New Material

1. Thoroughly mix and blend, using approved road mixers or other approved equipment, the base or subbase material, lime and required water until a homogeneous, friable mixture is obtained.
2. When lime is placed as a slurry and mixed by use of blades, the material shall be bladed as the limewater mixture is applied.

D. During the time between application and mixing, hydrated lime that has been exposed to the open air for a period of six hours or more, or has been subjected to excessive loss due to washing or blowing, shall not be accepted for payment.

3.05 COMPACTION:

- A. Compaction of the mixture shall begin immediately after final mixing and in no case later than three calendar days after final mixing.
- B. Aerate or sprinkle material as necessary to provide optimum moisture.
- C. Compaction shall begin at the bottom and shall continue in 6 inch lifts (maximum) until entire depth of mixture is uniformly compacted to 95% of maximum density as determined by AASHTO T-99, Method C.
- D. If any portion fails to meet the density specified, it shall be reworked as required to obtain specified density.

3.06 FINISHING, CURING, AND PREPARATION FOR SURFACING:

- A. Shape surface after compaction to the required lines, grades, and cross sections, followed by thorough rolling sufficiently light to prevent hair-line cracking.
- B. Completed shaped and rolled sections shall be moist cured for a minimum of seven days before further courses are added or any traffic, other than sprinkling equipment, is permitted on the completed sections.
- C. The surface or compacted layer shall be kept moist until covered by other base or paving material, or until a curing seal of CSS-1 or SS-1 emulsified asphalt has been applied. If used, the curing seal shall be applied, as soon as possible after final rolling, at a rate of 0.10 to 0.20 gallons per square yard. The exact rate will be as directed by the ENGINEER.



- D. No equipment or traffic will be permitted on lime treated materials for 72 hours after application of a curing seal.

3.07 MAINTENANCE OF COMPLETED SECTIONS:

- A. Maintain the completed lime treated material within the limits of contract, in condition satisfactory to the ENGINEER as to grade, crown and cross section until following course is constructed.
- B. Immediately repair all irregularities and defects that may occur before the next course is constructed at no cost to the City and as directed by the ENGINEER.

**PART 4 - MEASUREMENT AND PAYMENT**

4.01 MEASUREMENT AND PAYMENT:

- A. Lime treatment shall be measured for payment in square yards for the thickness of material shown on the plans for the surface area of completed and accepted work. Lime treatment shall be paid for at the contract unit price per square yard.
- B. Lime will be measured by the ton 2000 pounds dry weight. Lime will be paid for at the contract unit cost per ton of 2000 pounds dry weight.
- C. The contract unit price for lime treatment shall be full compensation for preparing roadbed; for loosening, pulverizing, application of lime, water content of slurry mixture and the mixing water; mixing, shaping, sprinkling, compacting, finishing, curing and maintaining; for manipulations required, for all labor, equipment, fuels, tools and incidentals necessary to complete the work.
- D. The contract unit price for lime shall be full compensation for furnishing the material; for all freight involved; for all unloading, storing and hauling; and for all labor, equipment, fuels, tools, and incidentals necessary to complete the work.

**\*\*\* END OF SECTION \*\*\***

## SECTION 02571

### SANITARY AND STORM SEWERS

#### PART 1 - GENERAL

##### 1.01 GENERAL DESCRIPTION OF WORK:

- A. This work shall consist of furnishing and installing all non-pressurized sanitary and storm sewer pipe, fittings, structures and accessories required for sanitary and storm sewer construction as required by the plans or the contract documents.

##### 1.02 QUALITY ASSURANCE:

- A. Comply with latest published editions of American Society of Testing and Materials (ASTM) Standards:
  - 1. ASTM C700 - Extra Strength Clay Pipe.
  - 2. ASTM C12 - Installing Vitrified Clay Pipe
  - 3. ASTM C425 - Compression Joints for Vitrified Clay Pipe and Fittings.
  - 4. ASTM C478 - Concrete Pipe Manholes.
  - 5. ASTM D1784 - Rigid Poly (vinyl Chloride) (PVC) Compounds and Chlorinated Poly (vinyl chloride) (CPVC) Compounds.
  - 6. ASTM D2321 - Practice for Underground Installation of Flexible Thermoplastic Sewer Pipe.
  - 7. ASTM D2564 - Solvent Cements for Poly Plastic Pipe and Fittings.
  - 8. ASTM D3212 - Joints for Drain and Sewer Plastic Pipes using Flexible Elastomeric Seals.
  - 9. ASTM D3033 Type PSP - PVC Sewer Pipe and Fittings.
  - 10. ASTM D3034 Type PSM - PVC Sewer Pipe and Fittings.
  - 11. ASTM C43 - Definition of terms relating to structural clay products.
  - 12. ASTM C443 - Specification for joints for circular concrete Sewer and culvert pipe, using rubber gaskets.
  - 13. ASTM F405 - Standard specification for corrugated polyethylene pipe and fittings.

14. ASTM F679 - Specification for polyvinyl chloride (PVC) large-diameter plastic gravity sewer pipe and fittings.
  15. ASTM F477 - Specification for elastomeric seals (gaskets) for joining plastic pipe.
  16. ASTM F667 - Specification for large diameter corrugated poly-ethylene pipe and fittings.
- B. Comply with latest published editions of American Association of State Highway and Transportation Officials (AASHTO) Standards:
1. AASHTO M252 - Specification for polyethylene corrugated drainage pipe.
  2. AASHTO M294 - Specification for corrugated polyethylene pipe, 12" to 36" diameter.
- C. Comply with latest published editions of UNI-Bell Plastic Pipe Association Standards:
1. UNI-B-5 - Recommended practice for the installation of PVC sewer pipe.
  2. UNI-B-6 - Recommended practice or low-pressure air testing of installed sewer pipe.
  3. UNI-B-9 - Recommended standard performance specifications for polyvinyl chloride (PVC) large diameter gravity sewer pipe and fittings on controlled inside diameter (nominal pipe sizes 18-48 inch).

1.03 SUBMITTALS:

- A. The contractor shall submit to the ENGINEER a manufacturer's certification for each type of pipe product(s) attesting that such product(s) meets all applicable and appropriate specification requirements.

**PART 2 - PRODUCTS**

2.01 GENERAL REQUIREMENTS:

- A. Pipe furnished shall be of materials specified herein for sanitary or storm sewer construction as required by plans or contract documents.
- B. All pipe delivered to project site shall be marked in accordance with applicable standard specification under which pipe is manufactured.
- C. The CONTRACTOR shall not use (and OWNER reserves the right to reject) materials that are or were improperly stored, inadequately protected, or physically damaged.

2.02 VITRIFIED CLAY PIPE (SANITARY SEWERS ONLY):

A. General:

Vitrified clay pipe shall be furnished in sizes as shown on the plans, as specified in the Special Provisions, or as specified by other documents of this contract.

B. Pipe:

1. Vitrified clay pipe shall be extra strength, as specified in ASTM C 700 and shall be sound, durable, and well burned throughout its entire thickness.
2. Pipe ends shall be square with the longitudinal axis; and sockets shall be true, circular, and concentric with the barrel of the pipe.
3. The ends of the pipe shall be so formed that, when the pipes are laid together and the joints made, they shall constitute a continuous and uniform line of pipe and shall have a smooth and regular interior surface.
4. Deviation from a straight line shall not be greater than 1/16 inch per linear foot and shall be measured from a straight edge on the concave side. Variation from a true circle of the spigot or socket of the pipe shall not be greater than 3 percent of its nominal diameter.

C. Fittings:

1. Stoppers shall be furnished with all pipes and branches that are to be left unconnected and shall be strong enough to meet the necessary load and hydrostatic pressure requirements.
2. Branches, tees and wyes of the size and quantity as required on the plans shall be furnished with joint connection material securely and completely fastened to the barrel of the pipe during the process of manufacture.

D. Joints:

1. "Bell and spigot" pipe or "plain end" pipe will be used as the method of connecting the pipes.
2. Either rubber elastomer or polyurethane compression/sealing member of the joint will be shaped for the particular connection. These materials shall meet the requirements of ASTM C 425.

3. For "plain end" pipe the collar used to couple the ends of the pipe shall be made from rigid unplasticized polyvinyl chloride and shall meet the requirements of ASTM C 425.
4. Joint material shall be any one of the types specified in ASTM C 425 and shall meet all requirements of that specification and Section 125.
5. The CONTRACTOR shall furnish the ENGINEER complete information concerning the type and make of all joint material which he intends to use under this contract including certification that the joint material meets the requirements of these specifications.
6. The pipe joints shall not leak when subjected to the shear loading and hydrostatic tests as specified by ASTM C 425.

E. Materials Testing:

Pipe and fittings shall conform to the test requirements set forth in ASTM C 301, ASTM C 425, and ASTM C 700. Test results shall be furnished to the ENGINEER, upon request. In addition to the stated tests, the ENGINEER may select at random 2 pipe lengths or joints for each 250 feet of pipe or fraction thereof of each size of pipe to be installed. The CONTRACTOR shall test the random selections and the results will be furnished by the ENGINEER.

F. Basis for Rejection:

1. Pipe or fitting with injurious cracks, checks, blisters, broken extremities, or other imperfections.
2. The following imperfections in a pipe or fitting will be considered injurious and cause for rejection where not in conflict with ASTM C 700, which will govern.
  - a) A single crack in the barrel of the pipe or fitting extending through the entire pipe wall thickness, regardless of the length of such crack. A single crack which extends through 1/5 of the pipe wall thickness and is 3 inches or longer. Any surface fire crack which is more than 1/16 inch wide at its widest point regardless of its length.
  - b) Lumps, blisters, pits, flakes, or tramped clay on the interior surface.
  - c) Spigot or socket end of the pipe or fitting varies from a true circle more than 3 percent of its nominal diameter.
  - d) When a straight pipe or fitting exhibits a deviation from a straight line of more than 1/16 inch per linear foot measured from a straight edge on the concave side.

e) A piece broken from the end of the pipe or fitting.

G. Perforated Clay Pipe:

1. Perforated clay pipe shall be extra strength pipe and shall conform to the requirements of ASTM C 700.
2. This type of pipe is used in situations where ground water are to be collected and transported to an outlet or for the purpose of a leach field for dispersion of waste water .
3. The pipe is generally encased in gravel. The installation of this type of pipe shall be as specified by the Special Provisions of this contract.

2.03 POLYVINYL CHLORIDE PLASTIC PIPE (PVC) (SANITARY AND STORM SEWERS):

A. General:

1. Polyvinyl Chloride (PVC) thermoplastic pipe shall be furnished in sizes as shown on the plans, as specified in the Special Provisions, or as specified by other documents of this contract.
2. Only trench installation of PVC pipe shall be permitted.

B. Pipe:

1. PVC pipe nominal sizes 4 inches to 15 inches shall meet the requirements of ASTM D 1784 and ASTM D 3033 or ASTM D 3034. Minimum wall classification shall be SDR 26, unless otherwise specified.
2. PVC pipe nominal sizes 18 inches to 48 inches shall meet the requirements of ASTM D 1784, ASTM F 679, and UNI-B-9. Minimum "pipe stiffness" at 5% deflection shall be 46 psi in accordance with ASTM D 2412.
3. Schedule 40 PVC pipe shall be used for service connections.

C. Fittings:

1. Fittings shall meet the same specification requirements of PVC pipe.

D. Joints:

1. Joints shall be "push-on" type conforming to ASTM D3212 with elastomeric gaskets conforming to ASTM D 3212 with elastomeric gaskets conforming to ASTM F 477.



2. All joints shall be assembled in accordance with manufacturer's published recommendations.
3. If used, lubricant shall have no detrimental effect on the gasket or the pipe.
4. The insertion reference mark on the pipe spigot end indicates the correct depth of spigot penetration into the pipe gasket joint. Spigot penetration shall be within 1/4 inch of the reference mark.

E. Materials Testing:

1. Pipe, fittings, and gaskets shall conform to applicable test requirements set forth in ASTM D 1784, ASTM D 2412, ASTM D 3033 or ASTM 3034, ASTM 4, ASTM F 679 and UNI-B-9.
2. Test results shall be furnished to the ENGINEER upon request.

F. Coding:

All PVC pipe shall be coded to eliminate confusion and prevent accidental damage to the water and sanitary sewer facilities. One of the following three alternatives for pipe coding must be used.

1. Color coding - The pipe shall have a full and uniform color coding according to the following schedule:
  - a) Sanitary Sewer (all sizes) - Green or Black.
  - b) Water (all sizes) - Blue or White.
2. Factory marking - The pipe shall be factory marked at the half points (180 degrees opposite) as specified in the ASTM D 3034.
3. Manual marking - Dark green marking ink shall be applied to all sewer pipe sections and shall consist of mixture of pigmented-paste and thinner; it shall not be water soluble after drying; it shall etch the pipe; it shall be specifically designed for permanent marking of PVC Pipe; it shall be Mathews M-149 offset ink or approved equal.

Application shall be as follows; for 8 inch through 12 inch pipe, a single 3 inch wide stripe; for 15 inch through 27 inch pipe, two 3 inch wide stripes.

The stripe(s) shall be straight and run length-wise on the pipe for the full length of the section of pipe. When two stripes are used, the centers of the two stripes shall not be separated by more than 8 inches.

The ink shall be of sufficient consistency to entirely blot out the color of the pipe to which it is applied.

2.04 CONCRETE PIPE (STORM SEWERS ONLY):

A. General:

1. The size, type, and class of the concrete pipe to be furnished shall be as shown on the plans as specified in the Special Provisions, or as specified by other documents of this contract.
2. With written approval from the OWNER or the ENGINEER, pipe stronger than that specified by the contract documents may be furnished at the CONTRACTOR'S option and the price differential increase from the contract with unit price shall be at his own expense, provided such pipe conforms in all other respects to the applicable provisions of these specifications.
3. Unless otherwise specified, pipe shall be either cast, spun, or manufactured by an approved equal method.
4. Concrete pipe shall not be utilized for sanitary sewers.

B. Pipe:

1. Each size, type, and class of concrete pipe specified shall meet the requirements of the applicable Standard Specifications:
  - 1) ASTM C 14,
  - 2) ASTM C 76,
  - 3) ASTM C 118,
  - 4) ASTM C 361,
  - 5) Other Standard Specification as specified.

C. Joints:

- 1.) The type of joint to be used for each size, type, and class of pipe shall be as shown on the plans or as specified in the Special Provisions.
- 2.) Rubber Gasket Joints.
  - a) Rubber gaskets for making compression type joints for concrete pipe shall be factory fabricated in accordance with ASTM C 443 and for pipes 12 inches in diameter and larger shall be o-ring and shall be handled, primed, installed, etc. in strict accordance with the manufacturer's recommendations.
  - b) The CONTRACTOR'S attention is particularly called to ASTM C 443, regarding storage of rubber gaskets.

- c) The CONTRACTOR shall furnish the ENGINEER complete information concerning the type and make of all joint material which he intends to use under this contract, including certification that the joint material meets the requirements of the specifications.
- 3.) If mortared joints are installed, the socket and spigot shall be free from any deleterious substance or condition which might prevent a satisfactory mortar bond at the joints.
- D. Materials Testing:
  - 1. If random testing is required by the OWNER or the ENGINEER, the ENGINEER will select at random at the point of manufacture test specimens of the pipe to be furnished for testing in accordance with the applicable Standard Specification from 2.04.B.
- E. Basis for Rejection:
  - 1. Basis for rejection shall be with the failure to conform to any of the requirements of the applicable Standard Specification from 2.04. B.
- F. Special Pipe:
  - 1. Where structural details of the special pipe are shown on the drawings, the manufacture of special pipe shall be checked by making the appropriate tests on the concrete placed in the pipe forms, by inspection of the steel reinforcing cages that are to be used in the pipe, by inspection of the fabrication of the pipe and by performing specimen tests in accordance with the requirements outlined in the Special Provisions.
- G. "Downgrading" of pipe:
  - 1. For the purpose of these specifications, "downgraded" pipe shall be defined as pipe which is to be used under loads less than that for which they have been designed.
  - 2. Pipe manufactured in accordance with applicable specifications, but which have not met their designed test loads may be "downgraded" by the ENGINEER and used provided that:
    - a) Load tests are made to establish the load under which they may be used. The number of tests to be made shall be as determined by the ENGINEER; this may require the testing of each section for acceptance.
    - b) All other test and inspection requirements of applicable specifications are met.

3. Individual specimens of pipe embodying major repairs or having numerous hairline cracks extending the full length of the section on the inside of the pipe at the minor axis or on the outside of the pipe at the major axis shall not be accepted for use.

H. Stockpiled pipe:

1. Stockpiled pipe may be used only when approved in writing by the ENGINEER provided the pipe meets all other specified requirements.
2. For the purpose of these specifications, "stockpiled" pipe shall be defined as pipe manufactured in quantity which will meet all the requirements of applicable specifications, but which was not manufactured for use in this specific project.
3. Pipe which has been rejected by another agency will not be considered a "stockpiled" pipe, nor will such pipe be accepted for use on this project.

I. Marking:

1. Each section of pipe shall be marked in conformance with the requirements of applicable Standard Specifications. The OWNER or ENGINEER may, at the place of manufacture, indicate his acceptance of the pipe for delivery to the job by marking the pipe with the Contracting Agency's mark. Such acceptance, however, shall not be considered a final acceptance.
2. If the pipe is subsequently rejected, the mark placed thereon by the OWNER or ENGINEER shall be defaced. No pipe will be marked, "Reject." Only pipe accepted shall be marked, "Accepted."

2.05 CORRUGATED POLYETHYLENE PIPE (STORM SEWERS ONLY):

A. General:

1. High Density Polyethylene (HDPE) corrugated pipe shall be furnished in sizes as shown on the plans, as specified in the Special Provisions, or as specified by other documents of this contract.
2. Only trench installation of HDPE corrugated pipe shall be permitted.

B. Pipe:

1. HDPE corrugated pipe nominal sizes 12 inches to 36 inches shall meet the requirements of AASHTO M 294, ASTM F 894, and ASTM D 3350 for the cell class 324420C except that the carbon black content shall not exceed 5%.
2. HDPE corrugated pipe shall have an integrally smooth interior (Type S).

3. In accordance with ASTM D 2412, HDPE corrugated pipe shall have a minimum "pipe stiffness" value as follows:

| Diameter  | Stiffness |
|-----------|-----------|
| 12" ----- | 50 psi    |
| 15" ----- | 42 psi    |
| 18" ----- | 34 psi    |
| 24" ----- | 28 psi    |
| 36" ----- | 22 psi    |

C. Fittings:

1. Fittings shall meet the same specification requirements of HDPE corrugated pipe.
2. Fittings shall be supplied by the manufacturer of the HDPE corrugated pipe.
3. Fittings shall not reduce the nominal diameter of the pipe.

D. Joints

1. Pipe couplings shall maintain pipe alignment, prevent pipe separation, and prevent infiltration of backfill material for the life of the installation.
2. Pipe couplings shall be "bell and spigot," with gaskets, split collar with gasket, or an integral system with gasket and shall conform to ASTM D 3212.
3. Gasket material shall conform to ASTM 477. Neoprene gaskets must be approved in writing by the Engineer.
4. Pipe couplings shall be corrugated so as to engage a minimum of 4 pipe corrugations, 2 on each side of pipe print.
5. The CONTRACTOR must obtain written approval from the ENGINEER for the CONTRACTOR'S proposed method and system of pipe coupling.
6. When necessary to cut the pipe length, the ends shall be cut squarely and cleanly so as not to create a gap exceeding 1/8 inch between pipe ends.
7. The joining of pipes or fittings shall provide a soil-tite joint or connection.
8. If used, lubricant shall have no detrimental effect on the gasket or the pipe.

E. Material Testing:

1. Pipe, fittings, and gaskets shall conform to applicable test requirements set forth in AASHTO M 294, ASTM F 477, ASTM F 894, ASTM D 3350 for the cell class 32 4420 C, and ASTM 2412.
2. Test results shall be furnished to the ENGINEER upon request.

F. Basis for Rejection:

1. Basis for rejection shall be failure to conform to any of the requirements specified herein.
2. Fittings and gaskets not supplied by pipe manufacturer shall be rejected.
3. Pipe, fittings, and gaskets with foreign inclusions, visible defects or damage shall be rejected.

G. Cover:

1. Minimum cover for corrugated polyethylene pipe shall be as noted in Table 02571-1.
2. Cover limitations calculated using AASHTO load factor design with 110lb/cu.ft. backfill around pipe at a density of 90% AASHTO T-99.

**TABLE 02571-1**

**HEIGHT OF COVER FOR CORRUGATED POLYETHYLENE PIPE**

| DIAMETER | MINIMUM COVER   |     | MAXIMUM COVER<br>(FEET) |
|----------|-----------------|-----|-------------------------|
|          | H20<br>(INCHES) | E80 |                         |
| 12"      | 12              | 24  | 58                      |
| 15"      | 12              | 24  | 59                      |
| 18"      | 12              | 24  | 62                      |
| 24"      | 12              | 24  | 61                      |

**PART 3 - EXECUTION**

3.01 GENERAL:

- A. Provide all labor, equipment, materials, and install all pipe, fittings, specials, and appurtenances as required or specified.



### 3.02 PIPE INSTALLATION:

#### A. Handling:

1. Handle in a manner to insure installation in sound and undamaged condition.
  - a. Do not drop or bump.
  - b. Use slings, lifting lugs, hooks and other devices designed to protect pipe, joint elements, and coatings.
2. Ship, move and store with provisions to prevent movements or shock contact with adjacent units.
3. Handle with equipment capable of work with adequate factor of safety against overturning or other unsafe procedures.

#### B. Installation:

1. Utilize equipment, methods, and materials insuring installation to lines and grades as indicated.
  - a. Do not lay pipe on blocks unless pipe is to receive total concrete encasement.
  - b. Use laser or minimum of 3 batter boards for control of line and grade.
  - c. Obtain approval from ENGINEER for method of proposed transfer of line and grade from control to the work.
2. Install pipe of size, material, strength class, and joint type with embedment as shown on plans or specified herein.
3. Insofar as possible, commence laying at downstream end of line and install pipe with bell ends in direction of laying. Sewer pipe shall have spigot ends in direction of flow. Deviations therefrom must be approved by the ENGINEER.
4. Clean interior of all pipe, fittings, and joints prior to installation. Do not allow foreign matter to enter pipeline during installation interruptions.
  - a. Close open ends of pipe with snug fitting closures.
  - b. Do not let water fill trench. Include provisions to prevent flotation should water control measures prove inadequate.
  - c. Remove water, sand, mud, and other undesirable materials from trench before removal of end closure.

5. Pipe shall be inspected prior to installation to determine if any pipe defects are present.
6. Brace or anchor as required to prevent displacement after establishing final position.
7. Perform pipe installation work only when weather and trench conditions are suitable.
8. Take extra care and precaution when hazardous atmospheres might be encountered.
9. Sanitary sewer relation to water mains:
  - a. Maintain 9 feet horizontal separation whenever possible.
  - b. When conditions prevent a horizontal separation of 9 feet, with written authorization from the OWNER or ENGINEER the sewer may be installed closer to a water main if:
    - (1) The sewer line constructed of PVC pipe meeting AWA Specifications and having a minimum working pressure rating of 150 psi or greater and equipped with pressure type joints; and
    - (2) the sewer line and water main are separated by a minimum vertical distance of 2 feet and a minimum horizontal distance of 4 feet, measured between the nearest outside diameters of the pipes.
  - c. When a sanitary sewer crosses a water line that portion of the sewer line shall be constructed as described in 3.02 B.8.b (1). The sewer may be placed no closer than 6 inches from the water line with one length of the sewer pipe be centered on the water line and pressure rated joints at each end of this length of sewer pipe. The separation distance must be measured between the nearest outside pipe diameters. The sewer line otherwise directed by the ENGINEER.
10. Separation of water mains from sewer manholes:
  - a. No water pipe shall pass through or come in contact with any part of a sewer manhole.
  - b. A minimum horizontal separation of 9 feet shall be maintained.
11. Construct service lines where shown on plans in accordance with plan details. Use pipe material specified on plans or in contract documents.

C. Jointing:

1. General requirements:

- a. Locate joints so as to provide for differential movement at changes in type of pipe embedment or at changes from rock to soil trench bottom, and structures.
- b. Locate joints at structures:
  - (1) Not more than 18 inches from structure wall, or
  - (2) Support pipe from structure wall to first joint with concrete cradle structurally continuous with base slab or footing of structure.
- c. Perform jointing in accordance with manufacturer's recommendations.
- d. Clean and lubricate all joint and gasket surfaces with lubricant recommended by manufacturer.
- e. Utilize methods and equipment capable of fully homing or making up joints without damage.
- f. Check joint opening and deflection for specification limits.

D. Closure Pieces:

1. Connect two segments of pipelines or a pipeline segment and existing structure with short sections of pipe fabricated for the purpose.
2. Observe specifications and requirements regarding location of joints, type of joints, pipe materials, and strength classifications.

E. Temporary Plugs:

1. Furnish and install temporary plugs at each end of work for removal by others or where indicated.
2. Remove temporary plugs from pipe laid under adjacent contract in order to complete pipe connection under this contract.
3. Plugs:
  - a. Use test plugs as manufactured by pipe supplier, or
  - b. Fabricate by CONTRACTOR of substantial construction.
  - c. Must be watertight against heads up to 20 feet of water.

- d. Secure in place in a manner to facilitate removal when required to connect additional pipe.

F. Special installation details for plastic pipe:

1. Plastic sewer and storm sewer pipe shall be installed in accordance with UNI-B-5. "Recommended Practice for the Installation of Polyvinyl Chloride (PVC) Sewer Pipe" or manufacturer's recommendations, whichever is applicable. Where a conflict rises with Section 02221 - Trench Excavation, Backfill, and Compaction, of these specifications, these specifications shall control.
2. The CONTRACTOR shall install an appropriately sized PS-10 press seal gasket as manufactured by Press Seal Gasket Corporation, (or approved equal) on PVC pipe at connecting manholes. The PS-10 gasket shall be installed per manufacturer's directions. No direct payment shall be made for this item, this cost shall be included in the pipe bid item price.

3.03 ACCEPTANCE TESTS FOR SANITARY SEWER PIPE LINES:

A. General:

1. Unless otherwise shown on the plans or specifically waived in writing by the ENGINEER, all sanitary sewers shall be tested for leakage. Each manhole shall be tested for leakage. An Air Test of the sanitary sewer pipeline shall be performed as stated in these specifications, as appropriate to the particular section of sanitary sewer pipeline being tested, and as directed by the ENGINEER.
2. The CONTRACTOR may, at his option, Air Test the sanitary sewer pipeline before backfilling the trench to aid the CONTRACTOR in checking the installation for any defects. Such testing is at the option of the CONTRACTOR and shall not constitute an acceptance test under these specifications.
3. The test for acceptance and compliance with these specifications shall be performed AFTER the pipe zone backfilling has been completed. In the case of new sanitary sewer pipelines with house laterals included as an integral part of the project, the test for acceptance and compliance with these specifications shall be performed AFTER the house laterals or stubs have been completed and backfilled.
4. If the leakage, as determined by the test(s) performed, is greater than allowed by these specifications, the CONTRACTOR at his expense, if necessary, shall excavate, repair or relay backfill and compact until the pipeline will satisfactorily pass the test(s) performed.

5. The CONTRACTOR shall, at his own expense, furnish all water, material, tools and labor for making the test required. All tests shall be made under the direction of the ENGINEER.

B. Air Test:

1. An Air Test may be conducted under all conditions of groundwater levels surrounding the sanitary sewer pipe subject to the pressure limits set out in c.2.c below.
2. Furnish all test equipment required including:
  - a) Necessary piping connections;
  - b) Test pumping equipment;
  - c) Pressure gauges or manometers;
  - d) Bulkheads and plugs;
  - e) All miscellaneous items required.
3. Obtain approval from ENGINEER of equipment and methods proposed for testing.
4. Test pipe in sections determined by CONTRACTOR and approved by ENGINEER.
5. The procedure for conducting an Air Test shall be as follows:
  - a) Clean the pipe section (manhole to manhole) being tested by propelling a snug-fitting inflated ball, or other adequate method, through the pipe with water. It is important that the pipe be thoroughly wetted if consistent results are to be expected.
  - b) Plug all pipe outlets with pneumatic plugs. The pneumatic plugs shall be able to resist internal testing pressures without requiring external bracing. Give special attention to house laterals.
  - c) Determine the groundwater level surrounding the section of sanitary sewer pipeline being tested. If the groundwater level is above the crown of the pipe, the test pressures shall be increased by 0.43 psig for each foot of water above the average elevation of the crown of the pipe. Test pressures shall not exceed 10 psig. If test pressures are to exceed 10 psig, an infiltration shall be performed instead under the direction of the ENGINEER.

- d) Introduce air slowly to the section of pipe under evaluation until the internal air pressure is raised to 4.0 psig plus any increase required by a high groundwater level.
- e) Allow the air pressure to stabilize. Air may be added slowly to maintain a pressure in the range of 3.5 to 4.0 psig (plus groundwater allowance) for two minutes.
- f) After the stabilization period, when the pressure reaches exactly 3.5 psig (plus groundwater allowance) the stopwatch is started and when the pressure reaches exactly 2.5 psig (plus groundwater allowance) the stopwatch is stopped.
- g) The time required for the one pound pressure drop shall not be less than the time in Table 02571-2 for the given pipe diameter:

**TABLE 02571-2**

| Pipe Diameter<br>(Inches) | Minutes |
|---------------------------|---------|
| 6                         | 3.0     |
| 8                         | 4.0     |
| 10                        | 5.0     |
| 12                        | 5.5     |
| 15                        | 7.0     |
| 18                        | 8.5     |
| 21                        | 10.0    |
| 24                        | 11.5    |
| 27                        | 12.75   |
| 30                        | 14.0    |
| 36                        | 17.0    |

- h) Repeat test as necessary after all leaks and defects have been repaired at no additional cost to the OWNER.
- i) In all cases where an Air Test is conducted, the manholes shall be tested separately as previously specified.
- j) All persons conducting Air Test must be made aware of the fact that an Air Test may be dangerous if improperly conducted.

**E. Deflection Testing:**

1. Deflection testing shall be performed on flexible thermoplastic (HDPE or PVC) pipe.
2. Not less than thirty (30) days after final backfill, the CONTRACTOR shall test for pipeline deflection with a mandrel in the presence of the OWNER'S or ENGINEER'S representative.

3. The mandrel shall be hand pulled; use no mechanical pulling devices.
4. The mandrel shall be provided by the CONTRACTOR and shall be sized and constructed as listed on the Table 02571-3 or 02571-4.
5. All pipe with test deflections in excess of 5 percent (unless otherwise specified as 7 1/2 percent) as determined by ASTM D 3034, ASTM F 679, or UNI-B-9 shall be excavated, rerounded, backfilled and retested after an additional period of thirty days.
6. Any pipe removed shall be replaced by use of gasketed repair couplings.
7. The pipeline shall be flushed and cleaned by the CONTRACTOR prior to any testing.
8. No flow shall be permitted in the pipeline while testing for deflections.

**TABLE 02571-3  
5 PERCENT DEFLECTION MANDREL**

| Type Pipe    | Nominal Size, In | Mandrel O.D., In | Tolerance In | Nearest 1/16" | Minimum Length, In | Minimum Mandrel Runners |
|--------------|------------------|------------------|--------------|---------------|--------------------|-------------------------|
| D3034 SDR 35 | 6                | 5.45             | +0.01        | 5-7/16        | 4                  | 6                       |
| D3034 SDR 35 | 8                | 7.28             | +0.01        | 7-4/16        | 4                  | 6                       |
| D3034 SDR 35 | 10               | 9.08             | +0.01        | 9-1/16        | 5                  | 8                       |
| D3034 SDR 35 | 12               | 10.79            | +0.01        | 10-13/16      | 6                  | 8                       |
| D3034 SDR 35 | 15               | 13.20            | +0.01        | 13-3/16       | 8                  | 8                       |
| F679         | 18               | 16.13            | +0.01        | 16-2/16       | 8                  | 12                      |
| F679         | 21               | 19.00            | +0.01        | 19            | 8                  | 12                      |
| F679         | 24               | 21.36            | +0.01        | 21-6/16       | 8                  | 12                      |
| F679         | 27               | 24.07            | +0.01        | 24-1/16       | 8                  | 12                      |
| F894         | 18               | 16.53            | +0.01        | 16-1/2        | 8                  | 9                       |
| F894         | 21               | 19.30            | +0.01        | 19-5/16       | 8                  | 9                       |
| F894         | 24               | 22.08            | +0.01        | 22-1/16       | 8                  | 9                       |
| F894         | 27               | 24.84            | +0.01        | 24-13/16      | 8                  | 9                       |
| F894         | 30               | 27.62            | +0.01        | 27-5/8        | 10                 | 9                       |
| F894         | 33               | 30.38            | +0.01        | 30-3/8        | 10                 | 9                       |
| F894         | 36               | 33.15            | +0.01        | 33-1/8        | 12                 | 9                       |
| F894         | 42               | 38.68            | +0.01        | 38-11/16      | 12                 | 9                       |



**TABLE 02574-4**  
**7> PERCENT DEFLECTION MANDREL**  
**(If otherwise specified in the contract document)**

| Type Pipe    | Nominal Size, In | Mandrel O.D., In | Tolerance In | Nearest 1/16" | Minimum Length, In | Minimum Mandrel Runners |
|--------------|------------------|------------------|--------------|---------------|--------------------|-------------------------|
| D3034 SDR 35 | 6                | 5.31             | +0.01        | 5-5/16        | 4                  | 6                       |
| D3034 SDR 35 | 8                | 7.09             | +0.01        | 7-1/16        | 4                  | 6                       |
| D3034 SDR 35 | 10               | 8.84             | +0.01        | 8-13/16       | 5                  | 8                       |
| D3034 SDR 35 | 12               | 10.51            | +0.01        | 10-8/16       | 6                  | 8                       |
| D3034 SDR 35 | 15               | 12.86            | +0.01        | 12-14/16      | 8                  | 8                       |
| F679         | 18               | 15.70            | +0.01        | 15-11/16      | 8                  | 12                      |
| F679         | 21               | 18.50            | +0.01        | 18-8/16       | 8                  | 12                      |
| F679         | 24               | 20.80            | +0.01        | 20-13/16      | 8                  | 12                      |
| F679         | 27               | 23.44            | +0.01        | 23-7/16       | 8                  | 12                      |
| F894         | 18               | 16.10            | +0.01        | 16-1/8        | 8                  | 9                       |
| F894         | 21               | 18.80            | +0.01        | 18-13/16      | 8                  | 9                       |
| F894         | 24               | 21.49            | +0.01        | 21-1/2        | 8                  | 9                       |
| F894         | 27               | 24.18            | +0.01        | 24-1/8        | 8                  | 9                       |
| F894         | 30               | 26.88            | +0.01        | 26-13/16      | 10                 | 9                       |
| F894         | 33               | 29.58            | +0.01        | 29-5/8        | 10                 | 9                       |
| F894         | 36               | 32.27            | +0.01        | 32-1/4        | 12                 | 9                       |
| F894         | 42               | 37.66            | +0.01        | 37-5/8        | 12                 | 9                       |

3.04 CLEANING:

- A. No pipe spalls, rocks, dirt, joint compounds, cement mortar, other trash or obstructions shall be left in a sewer pipeline of any size or type. During the flushing operations the manhole outlet shall be bagged or plugged so that this debris will not be carried into or contaminate an existing or active line.

3.05 SANITARY SEWER SERVICE CONNECTIONS:

- A. Install service connections as required by the plans, Special Provisions, or other contract documents.
- B. Service wyes: install wyes, 4-inch branch diameter unless shown otherwise on plans. See plan detail: "Typical Service Connection."
- C. Risers: use in lieu of wyes for service connections where invert of sewer is 15 feet or more below ground surface or where required by plans. See plan detail: Typical Riser Service Connection."
- D. Place suitable cap on end of connection, cement cap in place.
- E. Make no connections to house sewers or extend service connections beyond this contract without written authorization of the ENGINEER.
- F. Backfill trench only after recording exact location of service connection.

- G. Backfill trench only after entire service line and wye connection has been inspected and approved by the OWNER or the ENGINEER. Compact as specified in Section 02221 - "Trench Excavation, Backfill and Compaction."
- H. Street crossings shall have a minimum of 3 feet of cover to subgrade unless approved by ENGINEER.
- I. No payment for service lines will be made until all specified requirements have been met.
- J. Service lines shall be installed to the right-of-way line or 5 feet beyond any existing or proposed improvements (i.e., pavement, curb and gutter, sidewalk, etc.)
- K. Saddle connections shall be installed at a 45 degree angle (upward) above the springline of the main sewer and shall be spaced a minimum of 3 feet apart (centerline to centerline).
- L. Service lines shall be installed at a minimum slope of 2 percent with a minimum bury at the terminus of 4 feet, unless otherwise authorized by the ENGINEER. The pipe shall be placed on suitable bedding having a density of not less than 90 percent of maximum density. The pipe shall be uniformly supported by the bedding. Backfill of the service line shall be carefully placed and compacted per the requirements of Section 02221 - Trench Excavation, Backfill and Compaction.
- M. An "S" (3 inches high and 1/4 inch depth) shall be stamped or chiseled into the curb directly over the service.

### 3.06 SANITARY SEWER RISERS:

- A. Sanitary sewer risers shall be utilized where the sanitary sewer main is 15 feet or greater in depth.
- B. The riser shall extend to an elevation such that the service line can be installed as specified.
- C. The riser shall be installed in accordance with the plan detail; Typical Riser Service Connection.
- D. The riser shall be one length of pipe cut to the appropriate length as necessary, unless otherwise approved by the ENGINEER.
- E. Service risers and fittings shall be SCH 40 PVC sanitary sewer pipe.

### 3.07 SANITARY SEWER WET CONNECTIONS:

- A. A wet connection is one in which the work and pipeline placement is physically within the flow of the liquid.

- B. Connections to the shelf section of the floor will not be considered for payment as a wet connection.
- C. Pipe being placed, where flows of liquids are minimal and below the invert elevation will not be considered for payment as a wet connection.

3.08 CONNECTIONS TO EXISTING SANITARY AND STORM SEWER SYSTEMS:

Connect existing sanitary sewer service, which crosses new sewer line through equal sized wye.

- A. Connect no storm sewers to new sanitary sewers and visa-versa.
- B. Connections to existing manholes:
  - 1. Cut hole in existing manhole at required elevation.
  - 2. Insert new sewer pipe flush with inside of manhole.
  - 3. Grout new pipe in place.
  - 4. Reconstruct manhole bottom to properly accommodate new connection.
- C. Connections to existing sewer pipeline:
  - 1. Build new manhole around existing sewer pipeline.
  - 2. Break out existing sewer pipeline inside of manhole and construct bottom to properly accommodate new connection.
- D. On replacement/rehabilitation type projects, all existing sanitary sewer services shall be reconnected to the new sanitary sewer main utilizing new saddles and sanitary sewer service line pipe.
- E. The length of removed existing sanitary sewer service line shall be as necessary to accommodate the trench excavation and backfill conditions.
- F. The CONTRACTOR shall visually observe the condition of the existing sanitary sewer service line and notify the ENGINEER of any obviously deteriorated or defective conditions.
- G. The CONTRACTOR shall notify the property owner of the situation and the property owner shall be afforded the opportunity to visually observe the sanitary sewer service line within reasonable amount of time as dictated by normal construction activity.
- H. If a new sanitary sewer service line is to be installed, the CONTRACTOR shall install it at the same slope and alignment as the existing service. Particular care shall be taken to assure sound connections. The service line shall be uniformly supported on suitable bedding compacted to a density of

not less than 90 percent of maximum density. If service lines are reconnected such that the pipe is not fully supported, hand tampers shall be used to properly compact under the pipe.

- I. The CONTRACTOR shall chisel an "S" (3 inches high and 1/4 inch depth) into curb directly over a sanitary sewer service line.
- J. The CONTRACTOR shall provide accurate record information to the ENGINEER regarding both the horizontal and vertical location of the sanitary sewer service line. The horizontal location shall be the distance to the nearest foot from both the upstream and downstream manhole lid center. Elevations to the nearest 0.05 feet shall be provided for inverts of the sanitary sewer service stub-outs, and top of risers, if used.

#### **PART 4 - MEASURED AND PAYMENT**

##### **4.01 MEASUREMENT:**

###### **A. Sanitary and Storm Sewer Mains**

Sanitary and storm sewer pipe shall be measured from center of manhole to center of manhole or end of main. The pipe shall be the measured along the center of the pipe without considering fittings or other pipe connections.

###### **B. Storm Sewer Laterals**

For storm sewer lateral lines, such as from main or manhole to a storm inlet, the pipe shall be measured from the center of manhole or main to the interior wall face of the storm inlet along the center of the pipe.

###### **C. Sanitary Sewer Service Lines**

Sanitary sewer service lines installed on new construction shall be measured per each service installed.

###### **D. Sanitary Sewer Service Riser**

Sanitary sewer service risers shall be measured per each installed.

###### **E. Sanitary Sewer Service Reconnection**

Sanitary sewer service reconnections shall be measured per each installed.

###### **F. Wet Connection**

Wet connections shall be measured per each within the size increments specified.

###### **G. Vertical Drop Structures:**

Vertical drop structures at manholes shall be measured per each drop structure.

H. Removal and proper disposal of sanitary and storm sewer pipe

Removal and proper disposal of sanitary or storm sewer lines shall be measured by the linear foot of the specified pipe sizes.

4.02 PAYMENT:

A. The accepted quantity of each item below will be paid as follows:

1. Sanitary and storm sewer mains and storm sewer laterals

Sanitary and storm sewer pipe will be paid at the contract unit price per linear foot complete in place at various depths for the type, size and depth constructed.

2. Sanitary sewer service lines

Sanitary sewer service lines shall be paid at the contract unit price per each service.

3. Sanitary sewer service risers

Sanitary sewer service risers shall be paid at the contract unit price per each riser.

4. Sanitary sewer service reconnection

Sanitary sewer service reconnections shall be paid at the contract unit price per each reconnection.

5. Wet connection

Wet connections shall be paid at the contract unit price per each of the specified pipe sizes.

6. Vertical Drop Structures

Vertical drop structures shall be paid at the contract unit price per each drop structure of the specified pipe size and type.

7. Testing

No payment will be made for any required testing or retesting.

8. Removal and proper disposal of sanitary or storm sewer pipe
  - a) Payment will be made at the contract unit price per linear foot of specified pipe size. If required, no payment will be made until delivery of salvageable materials is verified by the OWNER or the ENGINEER.
  - b) Trenching, backfilling, and pavement repair shall be included in the contract unit price for removal and proper disposal of sanitary or storm sewer pipe.
- B. Compensation will be for furnishing all materials, labor, equipment, tools and incidentals required by the construction of the sanitary and storm sewer pipe and appurtenances, all in accordance with the plans and these specifications.

**\*\*\* END OF SECTION \*\*\***

## SECTION 02580

### STORM SEWER STRUCTURES

#### PART 1 - GENERAL

##### 1.01 GENERAL DESCRIPTION OF WORK:

- A. This work shall consist of installing appurtenances, except manholes, for storm sewers in accordance with details on the plans, as specified herein, and as directed by the ENGINEER.
- B. The various types of structures such as inlets, headwalls, energy dissipators, etc. are designated on the plans by letters or by numbers indicating the particular design of each. Each type shall be constructed in accordance with the details indicated and to the depth required by the profiles and schedules given.

#### PART 2 - PRODUCTS

##### 2.01 GENERAL:

- A. The construction plans will specify the size and material for the pipe between the storm sewer main and structure.
- B. The various types of storm inlets and their relation to curb and gutter, or valley gutter, are shown on the plan details. Construction plans will identify the type to be constructed.
- C. Grating size, material, and configuration shall conform to the plan details.

##### 2.02 MATERIALS:

- A. Concrete
  - 1. Concrete for cast-in-place structures shall be Class A concrete.
  - 2. Concrete for precast structures shall be 4000 psi at 28 days and comply with the applicable requirements of ASTM C 478.
- B. Mortar:
  - 1. Mortar shall be composed of 1 part Portland Cement and 2 parts clean, sharp mortar sand suitably graded for the purpose by conforming in other respects to the provisions of Section 03300 - Cast In Place Concrete for fine aggregate.
  - 2. Hydrated lime or lime putty may be added to the mix, but in no case shall it exceed 10 percent by weight of the total dry mix.



C. Reinforcement:

The inlet bases shall be reinforced with #4 rebar at 6" o/c (max).

D. Brick:

1. Bricks shall be of first quality, sound, hard-burned brick. Shale bricks, if used, shall be homogeneous, thoroughly and uniformly burned.
2. Bricks shall not absorb more than 17 percent of water by weight submerged in water for 24 hours, having been in a completely dry state prior to placing in water.
3. Clay brick shall conform to the requirements of ASTM C 62, Grade SW. Concrete brick meeting the requirements of ASTM C 55, Grade A, shall be acceptable.

E. Concrete Block:

Concrete blocks shall conform to ASTM C 139.

F. Frames, Grates, Rings and Covers:

Frames, grates, rings and covers shall conform to Section 02571 - Sanitary And Storm Sewers.

G. Miscellaneous Items:

Cast iron for supports, steps and inlet units shall conform to the shape and dimensions indicated. The casting shall be clean and perfect, free from sand or blow holes or other defects. Cast iron casting shall meet the requirements of ASTM A 48, Class 30. Steel for temporary covers when used with Stage Construction shall be adequate for the trench loads imposed.

### PART 3 - EXECUTION

#### 3.01 INSTALLATION OF DRAINAGE FACILITIES:

A. Excavation and Backfilling For The Storm Inlet.

**(1) Excavation.** Excavate a hole for the size of inlet and to the elevations shown in the attached plans and details. Trench protection shall be provided as required by OSHA. Care shall be exercised to avoid damaging any underground utilities.

**(2) Backfill.** As soon as practical, all portions of the excavation not occupied by the permanent structure shall be backfilled. Backfill material may be obtained from excavation or from other sources. Backfill material shall be free from stones of such size as to interfere with compaction; free from large lumps which will not break down

readily under compaction; and free from frozen lumps, wood, or other extraneous material.

Backfill which will not support any portion of the completed roadbed or embankment shall be placed in layers not more than 10 inches in depth (loose measurement). Backfill which will support any portion of the roadbed or embankment shall be placed in uniform layers not to exceed eight (8) inches in depth (loose measurement). Each layer of backfill shall be compacted to a density comparable with the adjacent undisturbed soil or as shown on the plans.

Each layer of backfill material, if dry, shall be wetted uniformly to optimum moisture content required to obtain a density comparable with the adjacent undisturbed soil or as shown on the plans and shall be compacted to that density by means of mechanical tamps or rammers. In no case will the compaction of the material be less than 95% of proctor with a moisture content between optimum and +3 percentage points. The use of rolling equipment of the type generally used in compacting embankments will be permitted on portions, which are accessible to such equipment.

When tamping equipment is furnished which, when proven to the satisfaction of the Engineer, will adequately compact the backfill material to the density required, the eight (8) inch and 10 inch lifts (loose measurement) specified above may be increased to lifts not to exceed 12 inches.

Cohesionless materials, such as sand, may be used for general backfilling purposes. Compaction of cohesionless materials shall be done with vibratory equipment, water ponding or a combination thereof.

B. All structures shall be installed per location and elevations as shown on the construction plans. If an underground obstruction is encountered during installation (i.e., existing utility line), the work shall stop and the ENGINEER shall be immediately notified.

C. Direct connection to a storm sewer main will be permitted if:

|                          |                          |
|--------------------------|--------------------------|
| Connecting Line          | Sewer Main               |
| Not more than 12" (I.D.) | Not less than 36" (I.D.) |
| Not more than 18" (I.D.) | Not less than 48" (I.D.) |

For connecting lines sized greater than those specified above, the connection to the main will be made with a manhole or a factory constructed wye. Connection to the main will comply with the plan details.

D. Removal of curb and gutter, and sidewalk for installation of a storm inlet shall be made at a scored or full depth joint.

E. Existing pavement removal and replacement shall conform to Section 02571 - Sanitary And Storm Sewers and shall conform to residential or arterial pavement

sections of the same material (asphalt or Portland Cement concrete) as the existing pavement.

- F. No width greater than 1/2 inch will be permitted between the inlet grate and the inlet frame.
- G. Private drainage facility installations, which are to be constructed under an authorization of "Drainage Facilities within Public Right-of-Way," shall comply with the standard details and specifications.
- H. The construction of inlets shall be completed as soon as is practical after storm sewer lines are connected to the inlet. All storm sewers shall be cut neatly at the inside face of the walls of the inlet and pointed up with mortar.
- I. Bases for cast-in-place inlets may be placed prior to or at the CONTRACTOR'S option after the sewer is constructed.
- J. The inverts passing out of or through an inlet shall be shaped and grouted across the floor of the inlet as indicated. This shaping may be accomplished by adding shaping mortar or concrete after the base is cast or by placing the required additional shaping material with the base.
- K. All miscellaneous storm sewer structures shall be completed in accordance with the plan details. Backfilling to original ground elevation shall be in accordance with the provisions of the appropriate items and as directed by the ENGINEER.

## **PART 4 - MEASUREMENT AND PAYMENT**

### **4.01 MEASUREMENT:**

- B. Trench excavation, backfill, and compaction will not be measured nor paid, but will be considered incidental work to the appropriate items.
- C. Frame, grates, rings and covers will not measured or paid, but will be considered incidental work to the appropriate items.
- D. Connecting pipe shall be measured in accordance with Section 02571 - Sanitary And Storm Sewers (4.01.B).
- E. Storm sewer inlets shall be measured per each for the type and size specified.
- F. All miscellaneous storm sewer structures satisfactorily completed in accordance with the plans and specifications will be measured per each complete unit.

### **4.02 PAYMENT:**

- C. The accepted quantities of storm inlets will be paid at the contract unit price per each per type of storm inlet, and shall include: the contract structure, grating, excavation, backfilling and compaction, and curb removal and replacement.
- D. The accepted quantities of complete special storm sewer structures shall be paid at the unit price per each.
- E. Compensation, whether by contract pay item or incidental work, will be for furnishing all labor, equipment, tools and incidentals required for the work, all in accordance with the plans and these specifications.

**\*\*\* END OF SECTION \*\*\***

## SECTION 19000

### TRENCH PROTECTION SYSTEM

#### PART 1 - GENERAL

##### 1.01 GENERAL DESCRIPTION OF WORK

- A. This work shall consist of shoring, bracing, bank stabilization, bank sloping, providing trench boxes or trench shields or other equivalent means to protect employees from the effects of moving ground or cave-ins for all trenches 5-feet or more in depth.
- B. All working shall be done in conformance with OSHA Safety and Health Standards (29 CFR 1926/1010 Chapter XVII Subpart P - Excavations, Trenching and Shoring).

##### 1.02 DEFINITIONS APPLICABLE TO THIS SPECIFICATION

- A. "Accepted engineering requirements (or practices)" - Those requirements or practices which are compatible with standards required a Registered Professional Engineer, or other duly licensed or recognized authority.
- B. "Angle or repose" - The greatest angle above the horizontal plane at which a material will lie without sliding.
- C. "Bank" - A mass of soil rising above a digging level.
- D. "Belled excavation" - A part of shaft or footing excavation, usually near the bottom and bell-shaped; i.e., an enlargement of the cross section above.
- E. "Braces (trench)" - The horizontal members of the shoring system whose ends bear against the uprights or stringers.
- F. "Excavation" - Any manmade cavity or depression in the earth's surface, including its sides, walls, or faces, formed by earth removal and producing unsupported earth conditions by reasons of the excavation. If installed forms or similar structures reduce the depth-to-width relationship, an excavation may become a trench.
- G. "Faces" - See paragraph (k) of this section.

- H. "Hard compact soil" - All earth materials not classified as running or unstable.
- I. "Kickouts" - Accidental release or failure of a shore or brace.
- J. "Sheet pile" - A pile, or sheeting, that may form one of the continuous interlocking line, or a row of timber, concrete, or steel piles, driven in close contact to provide a tight wall to resist the lateral pressure of water, adjacent earth, or other materials.
- K. "Sides," "Walls," or "Faces" - The vertical or inclined earth surfaces formed as a result of excavation work.
- L. "Slope" - The angle with the horizontal at which a particular earth material will stand indefinitely without movement.
- M. "Stringers" (wales) - The horizontal members of a shoring system whose sides bear against the uprights or earth.
- N. "Trench" - A narrow excavation made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench is not greater than 15-feet.
- O. "Trench" - A narrow excavation made below the surface of the ground. In general, the depth is greater than the width, but the width of a trench is not greater than 15-feet.
- P. "Trench shield" - A shoring system composed of steel plates and bracing, welded or bolted together, which support the walls of a trench from the ground level to the trench bottom and which can be moved along as work progresses.
- Q. "Unstable soil" - Earth material, other than running, that because of its nature of the influence of related conditions, cannot be depended upon to remain in place without extra support, such as would be furnished by a system of shoring.
- R. "Uprights" - the vertical members of a shoring system.
- S. "Wales" - See paragraph (m) of this section.
- T. "Walls" - See paragraph (k) of this section.

## **PART 2 – PRODUCTS**

(OMITTED INTENTIONALLY)

## **PART 3 - EXECUTION**

### **3.01 GENERAL PROTECTION REQUIREMENTS**

- A. Walkways, runways, sidewalks shall be kept clear of excavated material or other obstructions and no sidewalks shall be undermined unless shored to carry a minimum live load of one hundred and twenty-five (125) pounds per square foot.
- B. If planks are used for raised walkways, runways, or sidewalks they shall be laid parallel to the length of the walk and fastened together against displacement.
- C. Planks shall be uniform in thickness and all exposed ends shall be provided with beveled cleats to prevent tripping.
- D. Raised walkways, runways, and sidewalks shall be provided with plank steps on strong stringers. Ramps, used in lieu of steps, shall be provided with cleats to insure a safe walking surface.
- E. All employees shall be protected with personal protective equipment for the protection of the head, eyes, respiratory organs, hands, feet, and other parts of the body as set forth in OSHA Standards.
- F. Employees exposed to vehicular traffic shall be provided with and shall be instructed to wear warning vests marked with or made of reflectorized or high visibility material.
- G. Employees subjected to hazardous dusts, gases, fumes, mists or atmospheres deficient in oxygen, shall be protected with approved respiratory protection as set forth in OSHA Standards.
- H. No person shall be permitted under loads handled by power shovels, derricks, or hoists. To avoid injury from any spillage employees shall be required to stand away from any vehicle being loaded.
- I. The CONTRACTOR shall provide daily inspections of excavations shall be made by a competent person. If evidence of possible cave-ins or slides is apparent, all work in the excavation shall cease until the necessary precautions have been taken to safeguard the employees.



### 3.02 SPECIFIC EXCAVATION REQUIREMENTS

- A. Prior to opening an excavation, effort shall be made to determine whether underground installations, i.e., sewer, telephone, water, fuel, electric lines, etc., will be encountered, and if so, where such underground installations are located. When the excavation approaches the estimated location of such an installation, the exact location shall be determined and when it is uncovered, proper supports shall be provided for the existing installation. Utility companies shall be contacted and advised of proposed work prior to the start of actual excavation.
- B. Trees, boulders, and other surface encumbrances, located so as to create a hazard to employees involved in excavation work or in the vicinity thereof at any time during operations, shall be removed or made safe before excavating is begun.
- C. The walls and faces of all excavations in which employees are exposed to danger from moving ground shall be guarded by a shoring system, sloping of the ground, or some other equivalent means.
- D. Excavations shall be inspected by a competent person after every rainstorm or other hazard-increasing occurrence, and the protection against slides and cave-ins shall be increased if necessary.
- E. The determination of the angle of repose and design of the supporting system shall be based on careful evaluation of pertinent factors such as: Depth of cut; possible variation in water content of the material while the excavation is open; anticipated changes in materials from exposure to air, sun, water, or freezing; loading imposed by structures, equipment, overlying materials, or stored material; and vibration from equipment, blasting, traffic, or other sources.
- F. Supporting systems, i.e., piling, cribbing, shoring, etc., shall be designed by a qualified person and meet accepted engineering requirements. When tie rods are used to restrain the top of sheeting or other retaining systems, the rods shall be securely anchored well back of the angle of repose. When tight sheeting or sheets piling is used, full loading due to ground water table shall be assumed, unless prevented by weep holes or drains or other means. Additional stringers, ties, and bracing shall be provided to allow for any necessary temporary removal of individual supports.
- G. All slopes shall be excavated to at least the angle of repose except for areas where solid rock allows for line drilling or presplitting.

- H. The angle of repose shall be flattened when an excavation has water conditions, silty materials, loose boulders, and areas where erosion deep frost action and slide planes appear.
- I. Clearances:
  - 1. In excavations which employees may be required to enter, excavated or other material shall be effectively stored and retained at least 2-feet or more from the edge of the excavation.
  - 2. As an alternative to the clearance prescribed in subparagraph (1.) of this paragraph, the CONTRACTOR may use effective barriers or other effective retaining devices in lieu thereof in order to prevent excavated or other materials from falling into the excavation.
- J. Sides, slopes, and faces of all excavations shall meet accepted engineering requirements by scaling, benching, barricading, rock bolting, wire meshing, or other equally effective means. Special attention shall be given to slopes which may be adversely affected by weather or moisture content.
- K. Support systems shall be planned and designed by a qualified person when excavation is in excess of 20-feet in depth, adjacent to structures or improvements, or subject to vibration or ground water.
- L. Materials used for sheeting, sheet piling, cribbing, bracing, shoring, and underpinning shall be in good serviceable condition, and timbers shall be sound, free from large or loose knots, and of proper dimensions.
- M. Special precautions shall be taken in sloping or shoring the sides of excavations adjacent to previously backfilled excavation for a fill, particularly when the separation is less than the depth of the excavation. Particular attention also shall be paid to joints and seams of material comprising a face and the slope of such seams and joints.
- N. Except in hard rock, excavations below the level of the base of footing of any foundation or retaining wall shall not be permitted, unless the wall is underpinned and all other precautions taken to insure the stability of the adjacent walls for the protection of employees involved in excavation work or in the vicinity thereof.
- O. If the stability of adjoining building or walls is endangered by excavations, shoring, bracing, or underpinning shall be provided as necessary to insure their safety. Such shoring, bracing, or underpinning shall be inspected daily

or more often, as conditions warrant, by a competent person the protection effectively maintained.

- P. Diversion ditches, dikes, or other suitable means shall be used to prevent surface water from entering an excavation and to provide adequate drainage of the area adjacent to the excavation. Water shall not be allowed to accumulate in an excavation.
- Q. If it is necessary to place or operate power shovels, derricks, trucks, materials, or other heavy objects on a level above and near an excavation, the side of the excavation shall be sheet-piled, shored, and braced as necessary to resist the extra pressure due to such superimposed loads.
- R. Blasting and the use of explosives are not allowed unless authorized in other portions of the specifications.
- S. When mobile equipment is utilized or allowed adjacent to excavations, substantial stop logs or barricades shall be installed. If possible, the grade should be away from the excavation.
- T. Adequate barrier physical protection shall be provided at all remotely located excavations. All wells, pits shafts, etc., shall be barricaded or covered. Upon completion of exploration and similar operations, temporary wells, pits, shafts, etc., shall be backfilled.
- U. If possible, dust conditions, shall be kept to a minimum by the use of water, salt, calcium chloride, oil, or other means.
- V. In locations where oxygen deficiency or gaseous conditions are possible, air in the excavation shall be tested. Controls, as set forth in OSHA Standards shall be established to assure acceptable atmospheric conditions. When flammable gases are present, adequate ventilation shall be provided or sources of ignition shall be eliminated. Attended emergency rescue equipment, such as breathing apparatus, a safety harness and line basket stretcher, etc., shall be readily available where adverse atmospheric conditions may exist or develop in an excavation.
- W. Where employees or equipment are required or permitted to cross over excavations, walkways or bridges with standard guardrails shall be provided.
- X. Where ramps are used for employees or equipment, they shall be designed and constructed by qualified persons in accordance with accepted engineering requirements.

- Y. All ladders used on excavation operations shall be in accordance with the requirements of OSHA Standards.

### 3.03 SPECIFIC TRENCHING REQUIREMENTS

- A. Banks more than 5-feet high shall be shored, laid back to a stable slope, or some other equivalent means of protection shall be provided where employees may be exposed to moving ground or cave-ins. Refer to Figure 19000-1 as a guide in sloping of banks. Trenches less than 5-feet in depth shall also be effectively protected when examination of the ground indicates hazardous ground movement may be expected.
- B. Sides of trenches in unstable or soft material, 5-feet or more in depth, shall be shored, sheeted, braced, sloped, or otherwise supported by means of sufficient strength to protect the employees working within them. See Figure 19000-1 and Table 19000-1.
- C. Sides of trenches in hard or compact soil, including embankments, shall be shored or otherwise supported when the trench is more than 5-feet in depth and 8-feet or more in length. In lieu of shoring, the sides of the trench above the 5-foot level may be sloped to preclude collapse, but shall not be steeper than a 1-foot rise to each 1/2-foot horizontal. When the outside diameter of a pipe is greater than 6-feet, a bench of 4-foot minimum shall be provided at the toe of the sloped portion.
- D. Materials used for sheeting and sheet piling, bracing, shoring, and underpinning, shall be in good serviceable conditions, and timbers used shall be sound and free from large or loose knots, and shall be designed and installed so as to be effective to the bottom of the excavation.
- E. Additional precautions by way of shoring and bracing shall be taken to prevent slides or cave-ins when excavations or trenches are made in locations adjacent to backfilled excavations, or where excavations are subjected to vibrations from railroad or highway traffic, the operation of machinery, or any other source.
- F. Employees entering bell-bottom pier holes shall be protected by the installation of a removable-type casing of sufficient strength to resist shifting of the surrounding earth. Such temporary protection shall be provided for the full depth of that part of each pier and securely fastened to shoulder harness, shall be worn by each employee entering the shafts. This lifeline shall be individually manned and separate from any line used to remove materials excavated from the bell footing.

- G. Minimum requirements for trench timbering shall be in accordance with Table 19000-1. Braces and diagonal shores in wood shoring system shall be subjected to compressive stress in excess of values given by the following formula:

$$S = 1300 - \frac{20L}{D}$$

$$\text{Maximum ratio } L = \frac{50D}{D}$$

Where:

- L = Length, unsupported, inches.  
D = Least side of the timber in inches.  
S = Allowable stress in pounds per square inch of cross-section.

- H. When employees are required to be in trenches 4-feet deep or more, an adequate means to exit, such as a ladder or steps shall be provided and located so as to require no more than 25-feet of lateral travel.
- I. Bracing or shoring of trenches shall be carried along with the excavation.
- J. Cross braces or trench jacking shall be placed in true horizontal position, be spaced vertically, and be secured to prevent sliding, falling, or kickouts.
- K. Portable trench boxes or sliding trench shields may be used for the protection of personnel in lieu of a shoring system or sloping. Where such trench boxes or shields are used, they shall be designed, constructed, and maintained in a manner which will provide protection equal to or greater than the sheeting or shoring required for the trench. The CONTRACTOR shall provide a statement certified by a Registered Professional Engineer of the adequacy of trench boxes or shields.
- L. Backfilling and removal of trench supports shall progress together from the bottom of the trench. Jacks or braces shall be released slowly and, in unstable soil. Ropes shall be used to pull out the jacks or braces from above after employees have cleared the trench.

### 3.05 CONSTRUCTION REQUIREMENTS

- A. The CONTRACTOR unless provided for in the plans otherwise shall provide the minimum shoring shown in Table 19000-1 for the soil class noted in the plans. If approved by the ENGINEER, the CONTRACTOR may slope the excavation in accordance with Figure 19000-1.

- B. Should the soil conditions differ from those specified or should ground water be encountered in the excavation the CONTRACTOR shall notify the ENGINEER immediately. The CONTRACTOR shall refrain from operating in that portion of the trench where changed conditions are noted until such time as an inspection of conditions takes place and the CONTRACTOR is notified of measures necessary for continued operation.
- C. The CONTRACTOR shall prepare and submit a plan of operation. This plan of operation shall identify material, equipment, methods and installation and shall be inspected by a Registered Professional Engineer. The CONTRACTOR's ENGINEER shall certify the adequacy of the trench protection system and its adherence of OSHA Standards.

#### **PART 4 - MEASUREMENT AND PAYMENT**

##### **4.01 MEASUREMENT**

- A. Providing shoring and trenching or other alternate means in accordance with this specifications shall be measured by the linear foot of trench for specified types or sizes of pipe or structure in ranges of depth to the invert elevation of the pipe or structure. Additional depth for foundations etc., shall be considered incidental to the price bid for the protection.
- B. If the plans require sloping the excavation or the excavation is sloped in accordance with Figure 19000-1 after receiving permission from the ENGINEER, no payment will be made under this item.
- C. The CONTRACTOR shall provide shoring systems for construction of structure 5' or greater in depth. There will be no direct payment for these systems but it shall be considered incidental to the price bid for the structure.

##### **4.02 PAYMENT**

- A. The unit price bid for trench protection shall be full compensation for providing acceptable shoring or other alternate means, installing, inspecting, certifying and maintaining the shoring and for all manipulations, labor, tools, equipment and incidentals necessary to complete the work.

**\*\*\* END OF SECTION \*\*\***

## GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING CONSTRUCTION

### SEC. 1 – Definitions

(a) The Contract Documents shall consist of the Advertisement for Bids, Instructions to Bidders, The Proposal, The Contract Agreement, Performance Bond, Payment Bond, General Conditions of the Contract, Special Conditions of the Contract, Construction Specifications, Construction Drawings, Addendas, Change Orders and the Construction Plans including all modifications thereof incorporated in any of the documents before the execution of the Agreement.

(b) The Owner, the Contractor and the Engineer are those named as such in the Agreement. They are treated throughout the contract Documents as if each were of singular number and masculine gender.

(c) Wherever in this contract the word “Engineer” is used it shall be understood as referring to the Engineer of the Owner, acting personally or through assistant duly authorized in writing by the Engineer.

(d) Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or to an authorized representative of such individual, firm, or corporation, or if delivered at or sent by registered mail to the last business address known to him who gives the notice, with a copy sent to the central office of the Contractor.

(e) The term “Subcontractor” shall mean anyone (other than the contractor) who furnished at the site, under and Agreement with the contractor, labor, or labor and materials, or labor and equipment, but shall not include any person who furnished services of a personal nature.

(f) Work shall mean the furnishing of all labor, materials, equipment, and other incidentals as are required to complete the Contract for the purpose for which it was intended but was not shown on the Drawing or called for in the Specifications, or is desired by the Owner in addition to that work called for in the Drawings and Specifications.

(g) Dispute shall mean lack of agreement between any parties that have any obligations, duties, or responsibilities under the terms of the contract, Drawings, or Specifications.



## **SEC. 2 – Execution and Correlation of Documents**

The contract Documents shall be signed in duplicate by the Owner and the Contractor.

The contract Documents are complementary and what is called for by any one shall be as binding as if called for by all. In case of conflict between Drawings, and Specifications, the Specifications shall govern. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

## **SEC. 3 – Design, Drawings and Instructions**

It is agreed that the Owner will be responsible for the adequacy of design and sufficiency of the Drawings and Specifications. The Owner, through the Engineer, or the Engineer as the Owner's representative, shall furnish Drawings and Specifications which adequately represent the requirements of the work to be performed under the contract. All such Drawings and instructions shall be consistent with the Contract Documents and shall be true developments thereof. In the case of lump-sum Contracts, Drawings and Specifications which adequately represent the work to be done shall be furnished prior to the time of entering into the Contract. The Engineer may, during the life of the Contract, and in accordance with Section 18, issue additional instructions by means of Drawings or other media necessary to illustrate changes in the work.

## **SEC. 4 – Copies of Drawings Furnished**

Unless otherwise provided in the Contract Documents, the Engineer will furnish the Contractor, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the work.

## **SEC. 5 – Order of Completion**

The contractor shall submit, at such times as may be reasonably requested by the Engineer, schedules which shall show the order in which the Contractor proposed to carry on the work, with dates at which the Contractor will start the several part of the work, and estimated dates of completion of the several parts.

## **SEC. 6 – Ownership of Drawings**

All drawings, Specifications and copies thereof furnished by the Engineer shall not be reused on other work and, with the exception of the signed Contract, sets are to be returned to him on request, at the completion of the work. Owner may keep one set of Drawings for future use on the Project, including for maintenance of the Project.

## **SEC. 7 – Familiarity with Work**

The Owner shall make known to all prospective bidders, prior to the receipt of bids, all information that he may have as to subsurface conditions in the vicinity of the work, topographical maps, or other information that might assist the bidder in properly evaluation the amount and character of the work that might be required. Such information is given, however, as being the best factual information available to the Owner. The Contractor, by careful examination, shall satisfy himself as to the nature and location of the work, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this Contract.

## **SEC. 8 – Change Conditions**

The Contractor shall promptly, and before such conditions are disturbed, notify the Owner in writing of: (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; or (2) previously unknown physical or other conditions at the site, or an unusual nature, differing materially from those ordinarily encountered and generally recognized as ingrent in work of the character provided for in this Contract. The Engineer shall promptly investigate the conditions, and if he finds that such conditions, do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required; provided that the Engineer may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final settlement of the Contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Section 39 hereof.

## **SEC. 9 – Materials and Appliances**

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power transportation and other facilities necessary for the execution and completion of the work. Unless otherwise specified, all materials incorporated in the permanent work shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

## **SEC. 10 – Employees**

The Contractor shall at all times enforce strict discipline and good order among his employees, and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned to him.

## **SEC. 11 – Royalties and Patents**

The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof except that the Owner shall be responsible for all such loss when a particular process or the project of a particular manufacturer or manufactures is specified, unless the Owner has notified the Contractor prior to the signing of the contract that the particular process or product is patented or is believed to be patented.

## **SEC. 12 – Surveys**

Unless otherwise specified, the Owner shall furnish all land surveys and establish all base lines for locating the principal component parts of the work together with a suitable number of bench marks adjacent to the work. From the information provided by the Owner, the Contractor shall develop and make all detail surveys needed for construction such as slopes stakes, batter boards, stakes for pile locations and other working points, lines and elevations.

The contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

## **SEC. 13 – Permits, Licenses and Regulations**

Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the contractor observes that the Drawings and Specifications are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work.

## **SEC. 14 – Protection of the Public and of Work and Property**

The Contractor shall provide and maintain all necessary watchmen, barricades, warning lights and signs and take all necessary precautions for the protection, and safety of the public. He shall take all reasonable precautions to protect the Owner's property from injury or loss arising in connection with this contract. He shall make good any damage, injury or loss to his work and to the property of the Owner resulting from lack of reasonable protective precautions, except such as may be due to errors in the Contract Documents, or caused by agents or employees of the Owner. He shall adequately protect adjacent private and public property, as provided by law and the Contract Documents.

In an emergency affecting the safety of life, of the work, or of adjoining property, the Contractor is, without special instructions or authorization from the Engineer, hereby permitted to act at his discretion to prevent such threatened loss or injury. He shall also act, without appeal, if so authorized or instructed by the Engineer.

Any compensation claimed by the Contractor on account of emergency work, shall be determined by agreement.

### **SEC. 15 – Inspection of Work**

The Owner shall provide sufficient competent personnel, working under the supervision of a qualified engineer, for the inspection of the work while such work is in progress to ascertain that the completed work will comply in all respects with the standards and requirements set forth in the Specifications. Notwithstanding such inspection, the contractor will be held responsible for the acceptability of the finished work.

The Engineer and his representatives shall at all times have access to the work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access, and for inspection.

If the Specifications, the Engineer's Instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspected is by an authority other than the Engineer of the date fixed for such inspection. Inspections by the Engineer shall be made promptly, and where practicable at the source of supply. If any work should be covered up without approval or consent of the Engineer, it must, if required by the Engineer be uncovered for examination and properly restored at the Contractor's expense, unless the Engineer has unreasonably delayed inspection.

Re-examination of the work may be ordered by the Engineer, and, if so ordered, the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the Owner shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, the Contractor shall pay such cost.

### **SEC. 16 – Superintendence**

The Contractor shall keep on his work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the Contractor, and all direction give to him shall be binding as if given to the Contractor. Important directions shall be so confirmed on written request in each case. The Contractor shall give efficient superintendence to the work, using his best skill and attention.

## **SEC. 17 – Discrepancies**

If the Contractor, in the course of the work, finds any discrepancy between the Drawings and the physical conditions of the locality, or any errors or omissions in Drawings or in the layout as given by survey point and instruction, he shall immediately inform the Engineer, in writing, and the Engineer shall promptly verify the same. Any work done after such discovery, until authorized will be done at the Contractor's risk.

## **SEC. 18 – Changes in the Work**

The Owner may make changes in the Drawings and Specifications of scheduling of the Contract within the general scope at any time by a written order. If such changes add to or deduct from the contractor's cost of the work, the contract shall be adjusted accordingly. All such work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

In giving instructions, the Engineer shall have authority to make minor changes in the work not involving extra cost, and not inconsistent with the purpose of the work, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Engineer, and no claim for an addition to the Contract Sum shall be valid unless the additional work was so ordered.

The Contractor shall proceed with the work as changed and the value of any such extra work or change shall be determined as provided in the Agreement.

## **SEC. 19 – Extension of Time**

Extension of time stipulated in the Contract for completion of the Work will be made when changes in the work occur, as provided in Section 18; when the work is suspended as provided in Section 23; and when the work of the Contractor is delayed on account of conditions which could not have been foreseen, or which were beyond the control of the Contractor, his subcontractor or suppliers, and which were not the result of their fault or negligence. Extension of time for completion shall also be allowed for any delays in the progress of the work caused by any act (except as provided elsewhere in these General Conditions) or neglect of the Owner or of his employees or by other contractors employed by the Owner, or by any delay in the furnishing of Drawings and necessary information by the Engineer, or by any other case which in the opinion of the Engineer entitled the Contractor to an extension of time, including but not restricted to, acts of the public enemy, acts of any government in either its sovereign or any applicable contractual capacity, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restriction, freight embargoes, unusually severe weather, or labor disputes.

The Contractor shall notify the Engineer promptly of any occurrence or conditions which in the Contractor's opinion entitle him to an extension of time. Such notice shall be in writing and shall be submitted in ample time to permit full investigation and evaluation of the Contractor's claim. The Engineer shall acknowledge receipt of the Contractor's notice within 5 days of its receipt. Failure to provide such notice shall constitute a waiver by the Contractor of any claim.

## **SEC. 20 – Claims**

If the Contractor claims that any instructions by Drawings or other media issued after the date of the Contract involve extra cost under this Contract, he shall give the Engineer written notice thereof within 7 days after the receipt of such instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided for changes in the work. No such claim shall be valid unless so made.

## **SEC. 21 – Deductions for Uncorrected Work**

If the Engineer deems it inexpedient to correct work that has been damaged or that was not done in accordance with the Contract, an equitable deduction from the Contract price shall be made therefore, unless the Contractor elects to correct the work.

## **SEC. 22 – Correction of Work Before Final Payment**

The contractor shall promptly remove from the premises all materials and work condemned by the Engineer as failing to meet contract requirements, whether incorporated in the work or not. The contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not take action to remove such condemned material and work within 10 days after written notice, the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten days time thereafter, the Owner may, upon ten days' written notice, sell such materials at auction or at private sale and shall pay to the Contractor any net proceed thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

## **SEC. 23 – Suspension of Work**

The Owner may at any time suspend the work, or any part thereof by giving 1 days' notice to the Contractor in writing. The work shall be resumed by the Contractor within ten (10) days after the date fixed in the written notice from the Owner to the Contractor so to do. The Owner may reimburse the Contractor for expense incurred by the Contractor in connection with the work under this Contract as a result of such suspension, eligibility and amount of reimbursement to be determined by the Engineer.

The contractor may at the Owner's option, be allowed an increase in the contract price or an extension of the contract time, or both; directly attributable to any suspension if Contractor demonstrates an approved claim. Any increases or decreases in the contract price shall be governed by all state and local laws, statutes, codes, ordinances, rules and regulations governing competitive bidding or sealed proposals and change orders.

If the work, or any part thereof, shall be stopped by notice in writing aforesaid, and if the Owner does not give notice in writing to the Contractor to resume work at a date within 15 days of the date fixed in the written notice to suspend, then the contractor may abandon that portion of the work so suspended and he will be entitled to the estimates and payment for all work done on the portions so abandoned.

#### **SEC. 24 – The Owner’s Right to Terminate Contract**

If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed as a result of his insolvency, or if he should be guilty of a substantial violation of the contract, then the Owner, upon the certificate of the Engineer that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor and his Surety seven days’ written notice terminate the employment of the Contractor and take possession of the premises and of all materials, tools, equipment and other facilities installed on the work and paid for by the Owner, and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor’s default, shall be certified by the Engineer.

#### **SEC. 25 – Contractor’s Right to Stop Work or Terminate Contract**

If the work should be stopped under an order of any court, or other public authority, for a period of more than three months, through no act or fault of the contractor or of anyone employed by him, or if the Engineer should fail to issue any estimate for payment within seven days after it is due, or if the Owner should fail to pay the Contractor within seven days of its maturity then the Contractor may, upon seven days’ written notice to the Owner and the Engineer, stop work.

#### **SEC. 26 – Removal of Equipment**

In the case of termination of this Contract before completion from any cause whatever, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of his equipment and supplies from the property of the Owner, failing which the Owner shall have the right to remove such equipment and supplies at the expense of the Contractor.



## **SEC. 27 – Responsibility for Work**

The Contractor assumes full responsibility for the work. Until its final acceptance, the Contractor shall be responsible for damage to or destruction of the work (except for any part covered by partial acceptance as set forth in Sec. 28): He agrees to make no claims against the Owner for damages to the work from any cause.

Existing Structures : The Contractor shall, at his own expense immediately make permanent repairs and restore to original condition any structure that are to remain in place and damaged by the Contractor's equipment or workmen during the performance of work under this contract or damaged as a result of improperly executed work.

Traffic Areas, Driveways, Entrances : All traffic areas, driveways and entrances shall be restored to usable condition at the Contractor's expense as the work progresses. The Contractor shall make every effort to cooperate with the wishes of the individual property owners in providing access to private property along the site of the work.

Detours : The contractor shall do such work as may be necessary to provide and maintain a detour adjacent to all road structures for public travel. The Contractor shall maintain the detours in such condition that the public can travel over same in comfort and safety, and shall at his own expense perform such work as may be required to keep said detours open to the public at all times. The Contractor shall cooperate with the Engineer in the regulation of traffic and shall so govern his work that when it becomes necessary to suspend construction for a considerable period of time, the roadways will be re-opened to public travel. Material and equipment shall be stored and work shall be so conducted as to obstruct public travel as little as possible, and in no case shall there be less than eighteen (18) foot in width of obstructed roadway for the use of traffic shall be protected with barricades, flags and markers in conformance with the Texas Manual of Uniform Traffic Control Devices. (TMUTCD)

Barricades and Danger Warning and Detour Signs : When any section of the construction site is closed to traffic, the Contractor shall furnish and maintain at each end of the closed section and at all intersecting barricades, adequate warning directional signs. If at any time the barricades are not, in the opinion of the Engineer, sufficient to prevent traffic from entering the closed portions of the street-road-construction site, the Contractor shall provide and maintain watchmen at such points and for such periods of time as the Engineer may direct. When directed by the Engineer or required by the (TMUTCD), the Contractor shall provide and maintain such standard barricades, signs, lights and flags within the closed portion of the street-road- construction site as may be necessary to protect the work and safeguard local traffic.

No direct compensation except as specifically provided in these specifications will be made to the Contractor for the work and material involved in constructing, and maintaining detours and approaches; furnishing installing and maintaining barricades, danger, warning, and detour signs and their subsequent removal; and all other incidentals necessary for the proper direction, safety, and convenience of traffic during the Contract period, as this work is to be considered subsidiary to the several items for which unit prices are requested in the proposal.

## **SEC. 28 – Partial Completion and Acceptance**

If at any time prior to the issuance of the final certificate referred to in Section 42 hereinafter, any portion of the permanent construction has been satisfactorily completed, and if the Engineer determines that such portion of the permanent construction is not required for the operations of the Contractor but is needed by the Owner, the Engineer shall issue to the Contractor a certificate of partial completion, and thereupon or at any time thereafter the Owner may take over and use the portion of the permanent construction described in such certificate, and exclude the Contractor therefrom.

The issuance of a certificate of partial completion shall not be constructed to constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates if he has failed to complete it in accordance with the terms of this contract. The issuance of such a certificate shall not operate to release the Contractor or his sureties from any obligations under this contract or the performance bond.

If any prior use increases the cost of or delay the work, the Contractor shall be entitled to extra compensation, or extension of time, or both, as the Engineer may determine, unless otherwise provided.

## **SEC. 29 – Payments Withheld Prior to Final Acceptance of Work**

The Owner, as a result of subsequently discovered evidence, may withhold or nullify the whole or part of any payment certificate to such extent as may be necessary to protect himself from loss caused by:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor.
- (c) Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- (d) Damage to another contractor.

When the above grounds are removed or the Contractor provides a Surety Bond satisfactory to the Owner which will protect the Owner in the amount withheld, payment shall be made for amounts withheld, because of them.

No money may be withheld under (b) and (c) above if a payment bond is included in the Contract.

### **SEC. 30 – Assignment**

Neither party to the Contract shall assign the Contractor or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due to him or to become due to him hereunder, except to bank or financial institution acceptable to the Owner.

### **SEC. 31 – Rights of Various Interests**

Whenever work being done by the Owner's or by other contractor's forces is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Engineer, to secure the completion of the various portions of the work in general harmony.

### **SEC. 32 – Separate Contracts**

The Owner reserves the right to let other contracts in connection with this project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.

If the proper execution or results of any part of the Contractor's work depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results.

### **SEC. 33 – Subcontracts**

The Contractor shall, as soon as practicable after signing of the Contract, notify the Engineer in writing of the names of Subcontractors proposed for the work.

The Contractor agrees that he is fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions or persons directly employed by him.

Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner.

### **SEC. 34 – Engineer’s Status**

The Engineer shall perform technical inspection of the work. He has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the contract. He shall also have authority to reject all work and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

### **SEC. 35 – Engineer’s Decisions**

The Engineer shall, within a reasonable time after their presentation to him, make decisions in writing on all claims of the Owner or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

### **SEC. 36 – Land of Work**

The Contractor shall provide as indicated on Drawings No. – N/A and not later than the date when needed by the Contractor the lands upon which the work under this Contract is to be done, rights of way for access to same, and such other lands which are designated on the Drawings for the use of the Contractor. Such lands and rights of ways shall be adequate for the performance of the Contract. Any delay in the furnishing of these lands by the Owner shall be deemed proper cause for an equitable adjustment in both Contract price and time of completion.

The Contractor shall provide at his own expense and without liability to the Owner any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials.

### **SEC. 37 – Cleaning Up**

The Contractor shall remove at his own expense from the Owner’s property and from all public and private property all temporary structures, rubbish and waste materials resulting from his operations. This requirement shall not apply to property used for permanent disposal of rubbish or waste materials.

### **SEC. 38 – General Guaranty**

Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall guarantee all material and equipment furnished and Work performed for a period of one (1) year from the date of Substantial Completion. The Contractor warrants and guarantees for a period of one (1) year from the date of Substantial Completion of the system that the completed system is free from all defects due to faulty material or workmanship and the Contractor shall promptly make such correction as may be necessary be reason of such defects including the repairs of any damage to other parts of the system or other work resulting from such defects.

The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, and charge the Contractor the cost thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

### **SEC. 39 – Shop Drawings**

The approval of (shop) drawings by the Engineer shall not construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of such drawings will not relieve the contractor of the responsibility for any error which any exist as the contractor shall be responsible for the dimensions and design of adequate connections, details and satisfactory construction of all work.

### **SEC. 40 – Testing**

A testing allowance will be a part of the contract to cover costs of testing authorized by the Engineer. All tests that meet specifications will be paid out of this allowance. All failing tests will be paid directly by the Contractor.

### **SEC. 41 – Additional Insureds**

The Contractor shall name the OWNER & ENGINEER as added insured on all insurance policies required under the contract. The Contractor shall hold the OWNER & ENGINEER harmless for claims resulting from the Contractors' work. The Contractor shall defend all claims against the OWNER & ENGINEER resulting from the Contractor's work.

### **SEC. 42 – Contractor's Duty and Superintendence**

The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the CONTRACTOR in his absence and all direction given to him shall be as binding as if given to the CONTRACTOR.

The CONTRACTOR is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such work, so long as such methods do not adversely affect the completed improvements, the OWNER and ENGINEER being interested only in the result obtained and conformity of such completed improvements to the plans, specifications and contract.

Likewise, the CONTRACTOR shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the improvements being erected and the property or himself or any other person, as a result of his operations hereunder. Engineering construction drawings, and specifications and as well as any additional information concerning the work to be performed passing from or through the ENGINEER shall not be interpreted as requiring or allowing CONTRACTOR to deviate from the plans and specifications, the intent of such drawings, specifications and any other such instruction being to define with particularity the agreement of the parties as to the work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable, at his own expense, for design, construction, installation and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to person or property, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

Any review of work in process, or any visit or observation during construction, or any clarification of plans and specifications, by the ENGINEER, or any agent, employee, or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for temporary construction or construction processes, or by other means or method, is agreed by the CONTRACTOR to be for the purpose of observing the extent and nature of work completed or being performed, as measured against the drawings and specifications purpose of enabling CONTRACTOR to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the CONTRACTOR from full and complete responsibility for the proper performance of his work on the project, including but without limitation the propriety of means and methods of the CONTRACTOR in performing said contract, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Deviation by the CONTRACTOR from plans and specification that may have been in evidence during any such visitation or observation by the ENGINEER, or any of his representatives, whether called to the CONTRACTOR'S attention or not shall in no way relieve CONTRACTOR from his responsibility to complete all work in accordance with said plans and specifications.

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBJECT:** Approval of 2022-154 Right-of-Way Dedication Deed Thigpen-Zavala Elementary School with the City of McAllen

**REFERENCE:** Goal 3 - Facility Priorities; Strategy 5 - Partnerships with Business/Civic/Education Organization

**BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:**

The City of McAllen's ("City") Traffic Operations Department is proposing the conversion of South 25th Street by Thigpen-Zavala Elementary School from a one-way to a two-way street. In order for the conversion to take place, McAllen Independent School District must grant the City a conveyance, through a deed. The deed would transfer and assign the property, right of the tract of land containing 0.27 acres of land or through the approval of an easement, to the City.

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

The City has provided a copy of the Plat and the Metes and Bounds, showing proposed Right-of-Way along Thigpen-Zavala Elementary, attached.

**LEGAL REVIEW:**

The Right-of-Way Dedication Deed has been approved by legal counsel.

**BUDGETARY CONSIDERATIONS:**

None.

**RECOMMENDED BOARD ACTION:**

Administration recommends that the Board of Trustees approve the Right-of-Way Dedication Deed Thigpen-Zavala Elementary School with the City of McAllen.

**SUBMITTED BY:** 

**SUPERVISOR:** 

For further information contact:  
Name: Adel Felix  
Office: (956) 688-5445  
Email: Adelita.Felix@mcallenisd.net

**Approved for presentation to the Board of Education:**



519 \_\_\_\_\_  
**Superintendent of Schools**



NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

## RIGHT-OF-WAY DEDICATION DEED

STATE OF TEXAS §

COUNTY OF HIDALGO §

That **McAllen Independent School District**, ("Grantor"), whose mailing address is **2000 N. 23<sup>rd</sup> Street, McAllen, Texas 78501**, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid by the **CITY OF MCALLEN**, a municipal corporation of Hidalgo County, Texas, ("Grantee"), a Texas home rule municipality whose mailing address is P.O. Box 220, McAllen, Hidalgo County, Texas 78505-0220, the receipt and sufficiency of which consideration is hereby acknowledged, and as authorized pursuant to Texas Local Government Code Section 272.001(1), has DEDICATED, GRANTED, SOLD AND CONVEYED, and by these presents does DEDICATE, GRANT, SELL AND CONVEY unto Grantee a right of way for public street, utility and related public purposes, including the right of ingress, egress, and regress therein, and easements to construct and maintain public streets and utilities, or any other public purpose authorized by Local Government Code § 273.001 and deemed necessary by Grantee into and through all that certain real property located in the County of Hidalgo, State of Texas, and being more particularly described as follows:

**A 0.29 acre tract of land, more or less, situated in Hidalgo County, Texas, being part or portion of Lot 156, La Lomita Irrigation and Construction Company's Subdivision, Hidalgo County, Texas, map reference: Volume 24, Page 67-69, Deed Records, Hidalgo County, Texas, also being out of Lot 3, of a re-subdivision of said Lot 156, map reference Volume 1 Page 38 Map Records, Hidalgo County, Texas, said 0.29 acre tract more specifically described on Exhibit "A" attached to and incorporated for all purposes herein.**

TO HAVE AND TO HOLD the above-described property for said public street, utility, and other valid public purpose unto Grantee, its successors and assigns, forever, and Grantor does hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the said premises unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

The parties expressly agree that, in accordance with Texas Local Government Code, Section 272.001(1)(3), the title and right to possession of the land and interest conveyed by this Right-of-Way Deed shall revert to the Grantor if the Grantee ceases to use the land or interest in carrying out the following public purpose to use the land and interest conveyed as a right of way for public street, utility and related public purposes, including the right of ingress, egress, and regress therein, and easements to construct and maintain public streets and utilities, or any other public purpose authorized by Local Government Code § 273.001 and deemed necessary by Grantee

SIGNED and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Sam Saldivar, Jr, Board President

APPROVED AS TO FORM:  
Atlas, Hall & Rodriguez, LLP

By: Stephen L. Crain  
Stephen L. Crain (Feb 24, 2022 14:31 CST)  
Stephen L. Crain

ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF HIDALGO §

BEFORE ME, the undersigned authority, on this day personally appeared Sam Saldivar, Jr, Board President known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for purposes and consideration therein expressed and, in the capacity, therein stated.

GIVEN UNDER my hand and seal of office, this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public, State of Texas

Accepted by:

CITY OF McALLEN

By: \_\_\_\_\_  
Roel Rodriguez, P.E., City Manager

Approved as to form:

By: \_\_\_\_\_  
Isaac J Tawil, City Attorney

**AFTER RECORDING RETURN TO:**  
CITY OF McALLEN  
ATTN: Right of Way Dept.  
P. O. BOX 220  
McALLEN, TEXAS 78505-0220

Revised June 22, 2021  
**METES AND BOUNDS DESCRIPTION**  
**0.27 ACRES OF LAND OUT OF LOT 156**  
**LA LOMITA IRRIGATION AND**  
**CONSTRUCTION COMPANY**  
**SUBDIVISION,**  
**HIDALGO COUNTY, TEXAS**



Job No. 210102  
0.27 acres of land  
Sheet No.: 1 of 2

A tract of land containing 0.27 acres of land, more or less, situated in Hidalgo County, Texas, being part or portion of **Lot 156, LA LOMITA IRRIGATION AND CONSTRUCTION COMPANY SUBDIVISION**, Hidalgo County, Texas, map reference: Volume 24, Page 67-69, Deed Records, Hidalgo County, Texas, also being out of Lot 3, of a re-subdivision of said Lot 156, map reference Volume 1 Page 38 Map Records, Hidalgo, County Texas, said 0.27 acres also being more particularly described as follows;

**COMMENCING**, for reference at the Southeast corner of said Lot 3, the Southwest corner of Rowland Addition map reference: Volume 10 Page 15 Map Records, Hidalgo County, Texas, **THENCE** N 08° 35' 45" E, along the East line of said Lot 3, the West line of said Rowland Addition, a distance of 20.00 feet to a Nail set **FOR THE POINT OF BEGINNING**, and the Southeast corner of this tract;

**THENCE** N 81° 28' 08" W, along the North right-of-way line of said Galveston Avenue, a distance of 40.00 feet, to a Nail set for the Southwest corner hereof;

**THENCE** N 08° 35' 45" E, parallel to the East line of said Lot 3, a distance of 274.53 feet to a ½" iron rod with a plastic cap stamped "CVQ LS" set on a point of a non-tangent curve to the right, for the Northwest corner hereof;

**THENCE** in a Northeasterly direction on said non-tangent curve to the right, a distance of 55.41 feet to an "X" mark set on the East line of said Lot 3, said non tangent curve having a radius of 80.00 feet, a delta angle of 39° 41' 16", a tangent of 28.87 feet, and a chord that bears N 56° 01' 38" E 54.31 feet, for the Northeast corner hereof;

**THENCE** S 08° 35' 45" W, along the East line of said Lot 3 a distance of 311.22 feet, **TO THE POINT OF BEGINNING**, containing 0.27 acres of land, more or less.

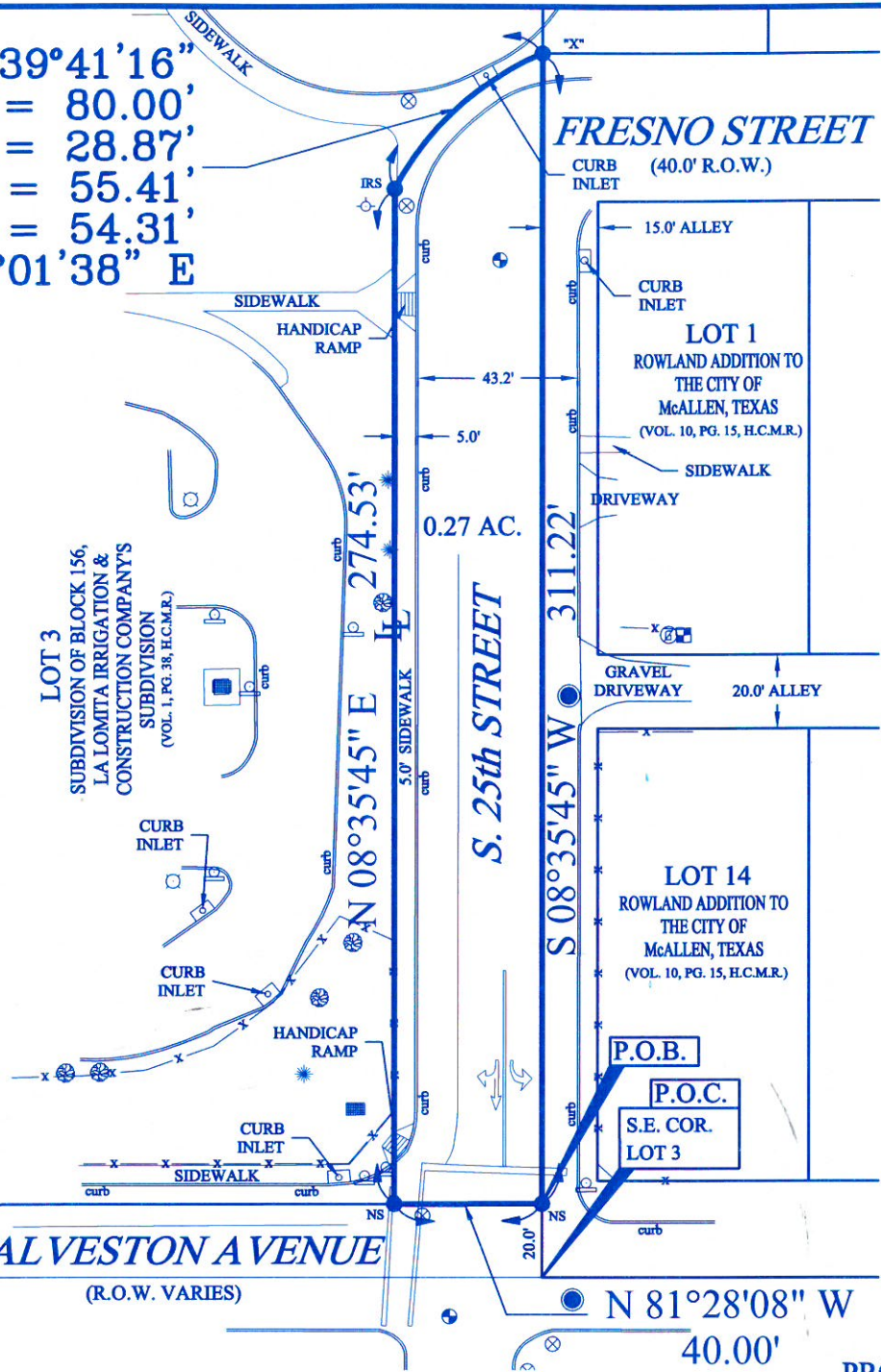
Bearing basis as per **TEXAS STATE PLANE COORDINATES SYSTEM NAD 1983, South Zone.**  
**THE ABOVE DESCRIPTION WAS SURVEYED ON THE GROUND UNDER MY DIRECTION**  
**ON JANUARY 14, 2021.**

*Jorge Rodriguez*  
**Jorge Rodriguez, R.P.L.S. No. 5303**  
CVQ Land Surveyors, LLC  
T.B.P.E.L.S. Firm No. 10119600



D = 39°41'16"  
 R = 80.00'  
 T = 28.87'  
 L = 55.41'  
 CH = 54.31'  
 N 56°01'38" E

BASIS OF BEARING AS PER  
 TEXAS STATE PLANE COORDINATE SYSTEM  
 NAD 83, SOUTH ZONE  
 SCALE: 1" = 50.00'



- LEGEND**
- = LOT LINE
  - NS = NAIL SET
  - IRS = SET 1/2" IRON ROD WITH A PLASTIC CAP STAMPED "CVQ LS"
  - "X" = "X" MARK SET ON CONCRETE
  - ⊗ = GAS METER
  - ⊙ = STORM SEWER MANHOLE
  - ⊕ = SANITARY SEWER MANHOLE
  - ⊗ = WATER VALVE
  - ⊖ = SIGN
  - ⊕ = FIRE HYDRANT
  - ⊖ = LIGHT POLE
  - ⊖ = WATER METER
  - ⊖ = GRATED INLET (TYPE B)
  - ⊖ = PALM TREE
  - ⊖ = TREE
  - X - = CHAIN LINK FENCE
  - R.O.W. = RIGHT OF WAY
  - H.C.M.R. = HIDALGO COUNTY MAP RECORDS
  - H.C.D.R. = HIDALGO COUNTY DEED RECORDS
  - P.O.C. = POINT OF COMMENCING
  - P.O.B. = POINT OF BEGINNING

**GALVESTON AVENUE**  
 (R.O.W. VARIES)

**PLAT SHOWING  
 PROPOSED RIGHT-OF-WAY  
 0.27 ACRES  
 OUT OF LOT 3,  
 RESUBDIVISION OF BLOCK 156,  
 LA LOMITA IRRIGATION & CONSTRUCTION  
 COMPANY SUBDIVISION  
 McALLEN, TEXAS**  
 (VOL. 1, PG. 38, H.C.M.R.)

FOR: CITY OF McALLEN

| PROJECT INFORMATION |            |
|---------------------|------------|
| SURVEYED DATE:      | 01/14/2021 |
| JOB NO.:            | 210102     |
| DRAWN BY:           | GTG        |
| CHECKED BY:         | J.R.       |
| REVISIONS:          |            |
| 06/22/2021          | TEXT       |

**CVQ LAND SURVEYORS LLC**

517 BEAUMONT AVE. 524  
 McALLEN, TEXAS 78501  
 Ph. (956) 618-1551  
 FAX (956) 618-1547  
 www.cvq@cvqls.com  
 TBPELS FIRM No. 10119600

**SURVEYOR'S CERTIFICATION**

I, Jorge Rodriguez, a Registered Professional Land Surveyor, do hereby certify the above foregoing plat to be a true and correct representation of the land as surveyed on January 14th, 2021, on the ground under my direction.

*Jorge Rodriguez*  
 P.L.S. No. 5303  
 STATE OF TEXAS

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**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

*Alexandra Bonaguidi*  
**SUBMITTED BY:** \_\_\_\_\_

*Cynthia Medrano-Richards*  
**SUPERVISOR:** \_\_\_\_\_

**Approved for presentation to the Board of Education:**

*J. Alexander*

525 \_\_\_\_\_  
**Superintendent of Schools**

**2021-1012 – RFP Trophies, T-Shirts, Awards, Incentives, and Related Products and Services (Round 7)**

|   | <b>Responding Supplier</b>  | <b>City</b> | <b>State</b> | <b>Recommendation</b> |
|---|---|-------------|--------------|-----------------------|
| 1 | Bay Promo, LLC  | Tampa       | FL           | Qualified             |
| 2 | Jones School Supply Company, Inc  | Columbia    | SC           | Qualified             |
| 3 | Varsity Brand Holding Co., Inc. dba Varsity Spirit Fashions and Supplies, LLC | Memphis     | TN           | Qualified             |



**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

*Alexandra Borsaglia*  
**SUBMITTED BY:** \_\_\_\_\_

*Cynthia Medrano-Richards*  
**SUPERVISOR:** \_\_\_\_\_

**Approved for presentation to the Board of Education:**

*J. Alexander*

527 \_\_\_\_\_  
**Superintendent of Schools**

**2021-1020 - RFP Food, Restaurants, Catering, Fundraising, Field Trips, and Rentals**

|   | <b>Responding Supplier</b>                            | <b>City</b> | <b>State</b> | <b>Recommendation</b> |
|---|---|-------------|--------------|-----------------------|
| 1 | Backstage Productions, LLC                            | McAllen     | Texas        | Qualified             |
| 2 | Huntington Sky Productions, LTD dba FASTSIGNS         | McAllen     | Texas        | Qualified             |
| 3 | EOAR, LLC dba Rebecca's Mexican Restaurant & Catering | McAllen     | Texas        | Qualified             |
| 4 | GLD Partners TC, LLC (City Café & Catering)           | McAllen     | Texas        | Qualified             |

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** *Cynthia Olivarez*  
Cynthia Olivarez (Feb 23, 2022 12:42 CST)

**SUPERVISOR:** *Rosalba De Hoyos*

**Approved for presentation to the Board of Education:**

*J. X. O'Connell*

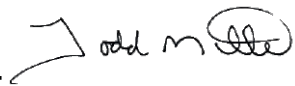
529

**Superintendent of Schools** Feb 23, 2022

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBMITTED BY:** \_\_\_\_\_

**SUPERVISOR:** 

**Approved for presentation to the Board of Education:**



530 \_\_\_\_\_  
**Superintendent of Schools** Feb 23, 2022

## PROPOSED REVISIONS (page 3 & 4)

### Leave Administration

The Superintendent shall develop administrative regulations addressing employee leaves and absences to implement the provisions of this policy.

### Definitions

The term "immediate family" is defined as:

#### Immediate Family

1. Spouse.
2. Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands *in loco parentis*.
3. Parent, stepparent, parent-in-law, or other individual who stands *in loco parentis* to the employee.
4. Sibling, stepsibling, and sibling-in-law.
5. Grandparent and grandchild.
6. Any person residing in the employee's household at the time of illness or death.

For purposes of the Family and Medical Leave Act (FMLA), the definitions of spouse, parent, son or daughter, and next of kin are found in DECA(LEGAL).

#### Family Emergency

The term "family emergency" shall be limited to disasters and life-threatening situations involving the employee or a member of the employee's immediate family.

#### Leave Day

A "leave day" for purposes of earning, using, or recording leave shall mean the number of hours per day equivalent to the employee's usual assignment, whether full-time or part-time.

#### School Year

A "school year" for purposes of earning, using, or recording leave shall mean the term of the employee's annual employment as set by the District for the employee's usual assignment, whether full-time or part-time.

#### Catastrophic Illness or Injury

A catastrophic illness or injury is a severe condition or combination of conditions affecting the mental or physical health of the employee or a member of the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the District. Such conditions typically require prolonged hospitalization or recovery or are expected to result in disability or death. Conditions relating to pregnancy or childbirth shall be considered catastrophic if they meet the requirements of this paragraph.

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**Note:** For District contribution to employee insurance during leave, see CRD(LOCAL).

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**Availability**

The District shall make state personal leave and local leave for the current year available for use at the beginning of the school year.

**State Leave Proration**

If an employee separates from employment with the District before his or her last duty day of the school year or begins employment after the first duty day of the school year, state personal leave shall be prorated based on the actual time employed.

If an employee separates from employment before the last duty day of the school year, the employee's final paycheck shall be reduced for state personal leave the employee used beyond his or her pro rata entitlement for the school year.

**Medical Certification**

An employee shall submit medical certification of the need for leave if:

1. The employee is absent more than three consecutive work-days because of personal illness or illness in the immediate family;
2. The District requires medical certification due to a questionable pattern of absences or when deemed necessary by the supervisor or Superintendent; or
3. The employee requests FMLA leave for the employee's serious health condition; a serious health condition of the employee's spouse, parent, or child; or for military caregiver leave.

In each case, medical certification shall be made by a health-care provider as defined by the FMLA. [See DECA(LEGAL)]

**State Personal Leave**

The Board requires employees to differentiate the manner in which state personal leave is used.

**Nondiscretionary Use**

Nondiscretionary use of leave shall be for the same reasons and in the same manner as state sick leave accumulated before May 30, 1995. [See DEC(LEGAL)]

Nondiscretionary use includes leave related to the birth or placement of a child and taken within the first year after the child's birth, adoption, or foster placement.

**Discretionary Use**

Discretionary use of leave is at the individual employee's discretion, subject to limitations set out below.

COMPENSATION AND BENEFITS  
LEAVES AND ABSENCES

DEC  
(LOCAL)

*Request for  
Leave*

In deciding whether to approve or deny a request for discretionary use of state personal leave, the supervisor shall not seek or consider the reasons for which an employee requests to use leave. The supervisor shall, however, consider the duration of the requested absence in conjunction with the effect of the employee's absence on the educational program and District operations, as well as the availability of substitutes.

**Local Leave**

Each employee shall earn five paid local leave days per school year in accordance with administrative regulations. **For the 2021–22 school year only, each employee shall earn an additional five paid local leave days in accordance with administrative regulations.**

Local leave shall accumulate without limit.

Local leave shall be used according to the terms and conditions of state personal leave. [See State Personal Leave, above]

**Extended Sick Leave**

After all available paid leave days and any applicable compensatory time have been exhausted, a full-time employee shall be granted in a school year a maximum of 30 leave days of extended sick leave to be used on consecutive workdays and only for the employee's own personal illness or injury, including pregnancy-related illness or injury.

A written request for extended sick leave must be accompanied by medical certification of the illness or injury.

Extended sick leave shall be unpaid leave.

**Sick Leave Pool**

An employee who has exhausted all paid leave as well as any applicable compensatory time and who suffers from a catastrophic illness or injury or is absent due to the catastrophic illness or injury of the employee's spouse, parent, or child may request the establishment of a sick leave pool, to which District employees may donate local leave for use by the eligible employee.

The pool shall cease to exist when the employee no longer needs leave for the purpose requested, uses the maximum number of days allowed under a pool, or exhausts all leave days donated to the sick leave pool.

The Superintendent shall develop regulations for the implementation of the sick leave pool that address the following:

1. Procedures to request the establishment of a sick leave pool;
2. The maximum number of days an employee may donate to a sick leave pool;



COMPENSATION AND BENEFITS  
LEAVES AND ABSENCES

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(LOCAL)

3. The maximum number of days per school year an eligible employee may receive from a sick leave pool; and
4. The return of unused days to donors.

Appeal

An employee may appeal a decision regarding the establishment or implementation of the District's sick leave pool in accordance with DGBA(LOCAL), beginning with the Superintendent or appropriate administrator.

**Peace Officers  
Mental Health  
Leave**

**A District peace officer who experiences a traumatic event in the scope of employment shall be granted a maximum of five days of mental health leave per traumatic event. Such leave shall be provided in accordance with administrative regulations and shall not be deducted from the employee's pay or leave balance.**

**The Superintendent shall develop regulations regarding mental health leave that address the following:**

1. **Circumstances or reasons under which a peace officer may use mental health leave;**
2. **Procedures for requesting mental health leave and maintaining the anonymity of the requestor;**
3. **The administrator authorized to approve requests for mental health leave; and**
4. **Other procedures deemed necessary for administering this provision.**

**Quarantine Leave**

**A District peace officer shall be granted quarantine leave when ordered by the local health authority or the peace officer's supervisor to quarantine or isolate due to possible or known exposure to a communicable disease while on duty. Such leave shall be provided in accordance with administrative regulations and shall not be deducted from the employee's pay or leave balance.**

**The Superintendent shall develop regulations regarding quarantine leave that address the following:**

1. **Continuation of all employment benefits and compensation for the duration of the leave;**
2. **Reimbursement for reasonable costs related to the quarantine; and**
- ~~5.3.~~ **Other procedures deemed necessary for administering this provision.**

COMPENSATION AND BENEFITS  
LEAVES AND ABSENCES

DEC  
(LOCAL)

**Family and Medical  
Leave**

FMLA leave shall run concurrently with applicable paid leave and compensatory time, as applicable.

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**Note:** See DECA(LEGAL) for provisions addressing FMLA.

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Twelve-Month  
Period

For purposes of an employee's entitlement to FMLA leave, the 12-month period shall begin on the first duty day of the school year.

Combined Leave for  
Spouses

When both spouses are employed by the District, the District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks. The District shall limit military caregiver leave to a combined total of 26 weeks.

Intermittent or  
Reduced Schedule  
Leave

The District shall not permit use of intermittent or reduced schedule FMLA leave for the care of a newborn child or for the adoption or placement of a child with the employee.

Certification of  
Leave

When an employee requests leave, the employee shall provide certification, in accordance with FMLA regulations, of the need for leave.

Fitness-for-Duty  
Certification

In accordance with administrative regulations, when an employee takes FMLA leave due to the employee's own serious health condition, the employee shall provide, before resuming work, a fitness-for-duty certification.

Leave at the End of  
Semester

When a teacher takes leave near the end of the semester, the District may require the teacher to continue leave until the end of the semester.

**Temporary Disability  
Leave**

Any full-time employee whose position requires educator certification by the State Board for Educator Certification or by the District shall be eligible for temporary disability leave. The maximum length of temporary disability leave shall be 180 calendar days. [See DBB(LOCAL) for temporary disability leave placement and DEC(LEGAL) for return to active duty.]

An employee's notification of need for extended absence due to the employee's own medical condition shall be forwarded to the Superintendent as a request for temporary disability leave.

The District shall require the employee to use temporary disability leave and paid leave, including any compensatory time, concurrently with FMLA leave.

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**Workers'  
Compensation**

**Note:** Workers' compensation is not a form of leave. The workers' compensation law does not require the continuation of the District's contribution to health insurance.

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An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.

**No Paid Leave  
Offset**

The District shall not permit the option for paid leave offset in conjunction with workers' compensation income benefits. [See CRE]

**Court Appearances**

Absences due to compliance with a valid subpoena or for jury duty shall be fully compensated by the District and shall not be deducted from the employee's pay or leave balance.

**Payment for  
Accumulated Leave  
Upon Retirement**

The following leave provisions shall apply to state and local leave accumulated beginning on the original effective date of this program.

An employee who retires from the District shall be eligible for payment for accumulated state and local leave under the following conditions:

1. The employee's retirement is voluntary, i.e., the employee is not being discharged or nonrenewed.
2. The employee provides advance written notice of intent to retire at least 14 calendar days before the intended last day of employment.
3. The employee has been employed by the District for at least the last eight consecutive years.

The employee shall receive payment for each day of accumulated state and local leave, to a maximum of 75 days, at a rate established by the Board. If the employee is reemployed with the District, days for which the employee received payment shall not be available to that employee.

The rate established by the Board shall be in effect until the Board adopts a new rate. Any changes to the rate shall apply beginning with the school year following the adoption of the rate change.

When a person who meets all eligibility criteria for this benefit dies while employed by the District, the District shall make the applicable payment to the estate of the deceased employee.

**Neutral Absence  
Control**

If an employee does not return to work after exhausting all available paid and unpaid leave, the District shall provide the employee written notice that he or she no longer has leave available for use.

COMPENSATION AND BENEFITS  
LEAVES AND ABSENCES

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(LOCAL)

The District shall automatically pursue termination of an employee who has exhausted all available leave, regardless of the reason for the absence [see DF series]. The employee's eligibility for reasonable accommodations, as required by the Americans with Disabilities Act [see DAA(LEGAL)], shall be considered before termination. If terminated, the employee may apply for reemployment with the District.

**BOARD AGENDA REPORT  
MCALLEN INDEPENDENT SCHOOL DISTRICT**

**MEETING DATE:** February 28, 2022

**SUBJECT:** Approval of Board of Education Meeting Minutes

**REFERENCE:** N/A

**BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:**

The minutes for each meeting of the Board of Education are traditionally brought to the Board for approval. After approval, the minutes become the Official Record of Board Action.

**ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:**

The Administration asks that the Board of Education consider approval of the attached minutes.

**LEGAL REVIEW:** None

**BUDGETARY CONSIDERATIONS:** None

**RECOMMENDED BOARD ACTION:**

That the Board approve the minutes of the following meeting(s):

Revised: Regular Board Meeting - January 24, 2022  
5:00 P.M. Board Workshop - February 7, 2022 - 10:00  
A.M. Board Workshop - February 7, 2022 - 5:30 P.M.  
Regular Board Meeting - February 14, 2022 - 5:00 P.M.

**SUBMITTED BY:** *Natalia Goza*

**SUPERVISOR:** *Sam Saldívar, Jr.*  
Sam Saldívar, Jr. (Feb 23, 2022 14:08 CST)

For further information contact:

Name: Natalia Goza

Office: 956-618-6094

eMail: natalie.goza@mcallenisd.net

**Approved for presentation to the Board of Education:**

*J. A. ...*

538

**Superintendent of Schools**



## Board Workshop

Monday, February 7, 2022 5:30 PM

Texas Our Texas room/Staff Development Building, Achieve Early College High School, 1601 North 27th Street, McAllen, TX 78501

Attendance Taken at 5:29 PM.

|                               |         |
|-------------------------------|---------|
| Sam Saldivar, Jr., President: | Present |
| Tony Forina, Vice-President:  | Present |
| Debbie Aliseda, Secretary:    | Present |
| Conrado Alvarado, Member:     | Absent  |
| Sofia Peña, Member:           | Absent  |
| Marco Suarez, Member:         | Present |
| Daniel Vela, Member:          | Present |

### 1. CALL MEETING TO ORDER

The meeting was called to order at 5:30 p.m.

### 2. PUBLIC COMMENT(S)

The following community member(s) addressed the Board

Nancy Treviño – Lack of paid COVID sick day consequences

Vivian Tamez – COVID day/pay

Elyssa Martinez – COVID leave/monies for teachers

Attendance Update Taken at 5:31 PM.

Conrado Alvarado: Present

Motion to reorganize the agenda to place item #5 at this point on the agenda. This motion made by Trustee Marco Suarez and seconded by Trustee Daniel Vela, Passed.

|                    |        |
|--------------------|--------|
| Debbie Aliseda:    | Yea    |
| Conrado Alvarado:  | Yea    |
| Tony Forina:       | Yea    |
| Sofia Peña:        | Absent |
| Sam Saldivar, Jr.: | Yea    |
| Marco Suarez:      | Yea    |
| Daniel Vela:       | Yea    |

Yea: 6, Nay: 0, Absent:1

Motion to reorganize the agenda to place item #4 at this point on the agenda. This motion made by Trustee Conrado Alvarado and seconded by Trustee Marco Suarez, Passed.

Debbie Aliseda: Yea

Conrado Alvarado: Yea

Tony Forina: Yea

Sofia Peña: Yea

Sam Saldivar, Jr.: Yea

Marco Suarez: Yea

Daniel Vela: Yea

Yea: 7, Nay: 0

### 3. 2021-2022 Budget Update

Item Submitted: Cynthia Medrano Richards, Assistant Superintendent Business Operations

Dr. J. A. Gonzalez, Superintendent

[For information only](#)

### 4. Discussion of Accelerating Remaining Two (2) \$1,000 Payments for Retention Stipends

Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Dr. J. A. Gonzalez, Superintendent

[For information only](#)

### 5. Discussion of Five (5) Additional Local COVID Leave Days

Item Submitted: Todd Miller, Assistant Superintendent Human Resources

Dr. J. A. Gonzalez, Superintendent

[For information only](#)

[Attendance Update Taken at 5:49 PM.](#)

[Sofia Peña: Present](#)

### 6. Report Regarding A New Program Offering in Partnership with UTRGV

Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent Instructional Services

Dr. J. A. Gonzalez, Superintendent

[Item pulled by administration](#)

### 7. ADJOURNMENT

Motion to adjourn at 7:07 p.m. This motion, made by Vice-President Tony Forina and seconded by Trustee Conrado Alvarado, Passed.

Debbie Aliseda: Yea

Conrado Alvarado: Yea

Tony Forina: Yea

Sofia Peña: Yea

Sam Saldivar, Jr.: Yea

Marco Suarez: Yea

Daniel Vela: Yea

Yea: 7, Nay: 0



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Board President

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Board Secretary